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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EX.P. 322/2008

BOMBAY MERCANTILE
CO-OPERATIVE BANK LTD

..... Decree Holder

versus

M/S ARVIND DYE CHEM
CORPORATION & ORS

..... Judgement Debtors

Appearances:-

Mr. A.H. Pasha, Advocate for B.M.C. Bank Ltd.

Mr. S.K. Bhattacharya and Ms. Seema Sharma, Advocates for applicant
in EX.APPL.(OS)s. 193-194/2019.

Mr. Abdhesh Chaudhary, Mr. Nishi Kant Singh, Ms. Manisha Suri and
Ms. Geetanjali Setia, Advocates for JD-2.

Mr. Siddharth Bambha and Chirag Ahluwalia, Advocates for Objectors.

Mr. Gauri Shanker Gupta, Mr. Fateh Chand Shah Kishan Dass and Mr.
Ravinder Kumar Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.07.2022

EX.APPL.(OS). 194/2019 & EX.APPL.(OS) 229/2010

1. EX.APPL.(OS) 194/2009 has been filed by Mr. S.K. Bhattacharya
for the following reliefs:-

*“A. Delete the property No. 2124 A Phatak Habash Khan,
Tilak Bazar, Khari Baoli, Delhi-110006 from the list of
properties for which warrant of attachment has been issued.*

*B. Pass such other or further orders as may be deemed fit
and proper in the facts and circumstances of the case.”*

2. EX.APPL.(OS) 229/2010 has been filed by Mr. Virender Gupta for



the following reliefs:-

“a. allow the present objections of the applicant/objector, declare the applicant/objector as rightful owner of properties No. 2123 and 2124A, Fatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006 and thereafter may be pleased to kindly release the properties No. 2123 and 212A, Fatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006 from attachment in the instant proceedings.

b. The costs of this proceedings may also be awarded in favour of the plaintiff and against the defendants.

c. Such other and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case may also be passed. ”

3. The present execution petition arises out of an arbitral award dated 04.03.2008. The decree holder-Bombay Mercantile Co-operative Bank Ltd. [“the Bank”] was the claimant in the arbitration proceedings. The judgment debtor Nos. 1, 2 and 3, namely, M/S Arvind Dye Chem Corporation, Mr. Neeraj Aggarwal and Mr. Hari Kishore Aggarwal are the respondents. The claims arose out of unpaid credit facilities taken by the judgment debtors from the Bank. It was the case of the Bank that various immovable properties were mortgaged to it by the judgment debtors. By the award under execution, the arbitrator directed as follows:-

“14. Keeping in view the facts and circumstances of the case. I hold that all the Respondents are jointly and severally liable to pay sum of ₹ 3,04,10, 628.68 which includes principal and interest as per claim position.

15. The Claimant bank will pay a sum of ₹ 28,000/- towards Arbitration cost.

16. The Claimant Bank has also prayed for future interest @18% p.a. till its realisation but keeping in view the facts that the rate of interest has been reduced by the banks, I



allow the future interest @12%.1/2 p.a. till the realisation of the entire amount by the bank.

17. I also pass an order that the claimant bank is also entitled to sell the movable and immovable properties hypothecated/mortgaged to the claimant bank to realise the outstanding amount in case the Respondents failed to repay the Claimed amount within 90 days from the date of order.

18. Further Claimant Bank is also entitled to proceed against all the Respondents No.1 to 3 for recovery of the entire claimed amount and Arbitration fee and to sell the movable and immovable properties of Respondents No. 1 to 3.”

4. The award was challenged in O.M.P.(COMM) 106/2016. The aforesaid petition was dismissed by a judgment dated 04.08.2017, paragraph 13 whereof reads as follows:-

“13. I may also mention about the conduct of the petitioners. There are two properties which are said to have been mortgaged with the respondent bank both situated at Phatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006. The Execution Petition was filed by the respondent bank in 2008. Objections have been filed by various third parties pointing out that the said two properties were never owned by petitioner No.2. Mohd. Suleh, Mr.Virender Gupta and Ms.Kusum Upadhyay have filed objections claiming that the property No.2121-2128 situated at Phatak Habash Khan, Khari Baoli, Tilak Bazar, Delhi-110006 are owned by them and was never owned or possessed by the judgment debtors/petitioner No.2. In Ex. P. 322/2008, this Court by order dated 20.2.2014 noted the submissions of the Objectors that the bank is claiming encumbrance on the property on the basis of GPA said to have been executed by Mr.Ashutosh Upadhyay in favour of petitioner No.2. There is no sale deed in favour of Mr.Ashutosh Upadhyay and this court prima facie held that the said Mr. Ashutosh Upadhyay had no title to the property and did not have the competence to execute the GPA dated 24.2.2000 in favour of Mr.Neeraj



Aggarwal petitioner No.2.”

5. In the meanwhile, objections have been filed to the award, including the present applications by Mr. Md. Sualeh and Mr. Virender Gupta (hereinafter, collectively, “the objectors”). The grounds on which these objections are predicated are substantially similar – both the objectors claim title to parts of the properties allegedly mortgaged by the judgment debtors to the Bank.

6. Mr. Mohd. Sualeh claims that a shop on the ground floor alongwith the mezzanine, without its roof, having an area of about 26 sq. yds in the property (*property No. 2124 A*, situated at, *Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006*) mentioned in the execution application, was purchased by him (alongwith his father, Mohd. Abid and his brother, Md. Rizwan) from one Mrs. Kamla Upadhyay vide a registered sale deed dated 18.04.1995.

7. Mr. Gupta claims title to the ground floor of property No. 2123 and part of property No. 2124A situated in Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006. The aforesaid properties were purchased by him from Mrs. Kamla Upadhyay under a registered sale deed dated 11.09.1996, a copy whereof has been placed on record.

8. There is no dispute as far as property No. 2124A is concerned, part of the ground floor was purchased by Mr. Md. Sualeh, and another part was purchased by Mr. Gupta. Learned counsel for the parties state that the entire ground floor of the property No. 2124A was thus, disposed of by Mrs. Kamla Upadhyay, to the objectors.

9. Learned counsel for the objectors submit that the property, to the extent purchased by them from Mrs. Kamla Upadhyay, has nothing to do



with any of the judgment debtors and that mortgage in respect of the same property, was fraudulently created by Mr. Ashutosh Upadhyay, son of Mrs. Kamla Upadhyay, well after the sale had already been executed in favour of the objectors. They draw my attention to the documents relied upon by the award holder, namely a registered sale deed dated 25.11.1993, executed by Mr. Shiv Charan Beri, Mr. Shyam Sunder Beri, and Mr. Prabhu Dayal Beri in favour of Mrs. Kamla Upadhyay, which covers four shops bearing municipal Nos. 2122, 2123, 2124 and 2124A (part) measuring about 72 sq.yds situated in Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006. The Bank has, in support of its claims that the aforesaid properties were mortgaged to it, relied upon the General Power of Attorney dated 24.02.2000 [“the GPA”] executed by Mr. Ashutosh Upadhyay in favour of Mr. Neeraj Aggarwal, judgment debtor No. 2. A copy of the said GPA, which has been placed on record by the Bank clearly refers to the following property:-

“Entire First Floor, Entire Second Floor, with Terrace thereon, Part of Property Mpl. No. 2121 to 2128, having area measuring 1594 sq.ft. i.e. 177.1 sq.yds., situated in Phatak Habash Khan, Ward No.III, Khari Baoli, Tilak Bazar, Delhi-110006, and bounded as under:

East: Tilak Bazar.

West: Other’s Property.

North: Other’s Property No. 2129.

South: Other’s Property.”

10. Alongwith its reply, the Bank has placed on record a will of Mr. Ashutosh Upadhyay dated 24.02.2000, agreement to sell between Mr. Ashutosh Upadhyay and Mr. Neeraj Aggarwal dated 25.02.2000, receipt dated 25.02.2000 and possession letter dated 25.02.2000, as well as the



affidavit of Mr. Ashutosh Upadhyay, all of which refer to the same property i.e. including first floor and second floor, whereas the objectors claim title in the ground floor of property Nos. 2123 and 2124 A, Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006.

11. At this stage, Mr. A.H. Pasha, learned counsel for the decree holder, submits that similar documents executed by Mrs. Kamla Upadhyay dated 26.02.2022 in favour of Mr. Neeraj Aggarwal are also available with him and it is these documents that were to be filed alongwith the Bank's response to the objections. The said documents refer to the shops on the ground floor of the said property including shop Nos. 2123 and 2124 A, Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006.

12. Be that as it may, and even taking the said documents into account, it is clear that the Bank does not claim to rely upon any sale deed executed by Mrs. Kamla Upadhyay in favour of Mr. Neeraj Aggarwal. During the course of these execution proceedings, her statement was also recorded in Court on 19.03.2014 in which she stated that she has never executed any document in favour of Mr. Neeraj Aggarwal, although signatures on certain documents appear to be hers. She further affirmed that parts of her property were sold to Mr. Md. Sualeh and Mr. Virender Gupta.

13. In these circumstances, Mr. Pasha states that the Bank will not seek to execute the property in respect of the ground floor of property Nos. 2123 and 2124 A, Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006, which are claimed by the objectors. Learned counsel for the objectors confirm that the objectors' interests are limited to the ground



floor of the property Nos. 2123 and 2124 A, Phatak Habash Khan, Tilak Bazar, Khari Baoli, Delhi-110006.

14. These applications stand disposed of in terms of the aforesaid statements.

EX.P. 322/2008

1. In view of the above order, Mr. Pasha will place on record a list of other properties, subject to the mortgage against which the decree holder seeks to execute the award.

2. Mr. Nishi Kant Singh, learned counsel, appears on behalf of judgment debtor No.2 and seeks time to make further submissions. He states that he has recently been engaged as a counsel by judgment debtor No.2. Judgment debtor No.2 is directed to file an affidavit of assets in terms of Form 16A of Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure, 1908, within four weeks from today. Judgment debtor No.2 will also remain personally present before this Court on the next date of hearing. Judgment debtor No.3 is stated to have passed away. Mr. Singh will supply the names and addresses of the legal heirs of judgment debtor No.3 to Mr. Pasha within one week to enable Mr. Pasha to take necessary steps.

3. List on 09.12.2022.

PRATEEK JALAN, J

JULY 19, 2022

'vp' /

Click here to check corrigendum, if any