1996:CHC-OS:18

OD-23

ODER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CS/719/1981
IA No. GA/04/2022

The Hanuman Estates Ltd.
VS
Punjab National Bank

BEFORE:
The Hon'ble JUSTICE SUGATO MAJUMDAR
Date: 22nd June, 2023

Appearance:
Mr. Sabyasachi Chowdhury, Adv.
Mr. A. Mookherjee, Adv.
Mr. A. Meheria, Adv.
Ms. P. Banerjee, Adv.
Ms. S. Paul, Adv.
Ms. A. Das, Adv.

Mr. P. K. Mukherjee, Adv.

The Court: The instant suit was filed on 13/08/1981 by the Plaintiff against the Defendant seeking for decree of declaration that the mortgage created by deposit of title deeds in respect of premises no. 19, R. N. Mukherjee Road, Kolkata - 700001 on 30/08/1968 stood redeemed with effect from 24/01/1978; agreement of guarantee and the purported letter of guarantee is void, inoperative and unenforceable along with other prayers.

On 30/01/1968, the Plaintiff/Petitioner herein entered into an agreement of guarantee for repayment of outstanding dues in the loan account named as “First Loan Account” to an extent of Rs. 21,00,000/- availed by one Naskarpara Jute Mills Company Limited from the Defendant, United Bank of India. The Plaintiff/Petitioner deposited its title deeds relating to the property consisting of land and building located at 19, R. N. Mukherjee Road, Kolkata – 700001 with the Defendant as a security under the agreement of guarantee. Guarantee was subsequently extended.

On 17/04/1981 Naskarpara Jute Mills Company Limited was declared lock-out. One winding up petition under Companies Act, 1956 was filed in the High Court, Calcutta being C.P. 597 of 1977. Winding up order was passed on 28/03/1977.

On inquiry it came to the notice of the Plaintiff/Petitioner that Naskarpara Jute Mills Company Limited repaid all the outstanding debts in respect of the “First Loan Account” on or about 24/01/1978. The Plaintiff/Petitioner stood as guarantor in respect of this account. It is contention of the Plaintiff/Petitioner that on repayment of loan in respect of the “First Loan Account” by the said Naskarpara Jute Mills Company Limited, the obligation of the Plaintiff/Petitioner stands discharged. The Plaintiff/Petitioner drew attention of the Defendant of the same facts in terms of a letter dated 22/06/1981.

On 13/08/1981, the Defendant filed a suit in the High Court being C.S. 608 of 1981 arraying Naskarpara Jute Mills Company Limited as Defendant no. 1 and the Plaintiff/Petitioner as Defendant no. 3. In that suit prayers were made for decree of Rs.1,81,07,623.64p along with other reliefs including declaratory decrees.

On 10/04/1989 an order was passed in the present suit by which the Defendant was directed to deposit the title deeds in respect of premises no. 19, R. N. Mukherjee Road, Kolkata – 700001 with the Registrar, Original Side. The title deeds were so deposited pursuant to the aforesaid Order of this Court.

Subsequent to promulgation of Recovery of Debts Due to Bank & Financial Institution's Act, 1993 (now known as Recovery of Debts and Bankruptcy Act, 1993) the aforesaid suit C.S. 608 of 1981, filed by the Defendant, was transferred to the Debt Recovery Tribunal – I, Kolkata Bench and the same was renumbered as T.A. 46 of 2000. This was so renumbered in terms of the Order dated 18/12/2000 by Debt Recovery Tribunal – I.

By an Order dated 15/03/2001, the Official Liquidator of this Court was directed by this Court in C.A. 782 of 2000 connected with C.P. 93 of 1998 to disburse a sum of Rs.5,00,00,000/- to the Defendant out of sale proceeds of the assets by 25/03/2001. The said payment was made and the Defendant acknowledged payment of the said amount of Rs.5,00,00,000/-in terms of the receipt dated 21/03/2001.

It is contended by the Plaintiff/Petitioner that in terms of the Order dated 15/03/2001, Rs.5,00,00,000/- was paid whereas the claim of the Defendant is Rs. 1,81,07,623.64P in renumbered T.A. 46 of 2001, pending before the Debt Recovery Tribunal – I.

On 30/04/2012, Debt Recovery Tribunal – I took up T.A. 46 of 2001. It was recorded by the Debt Recovery Tribunal – I that a sum of Rs.5,00,00,000/- was paid by the Official Liquidator to the Defendant and that the Defendant had no further claim and dismissed T.A. 46 of 2001.

T.A. 46 of 2000 was renumbered as O.A. 582 of 2018 on 21/12/2012. On 11/01/2019 the matter was taken up and it was submitted by the Advocate for the defendant and the Official Liquidator that the Defendant had already received Rs.5,00,00,000/-. O.A. 582 of 2018 was recorded to the original number being T.A. 46 of 2000 and was disposed of.

In view of the conspectus of facts, it is contention of the Plaintiff/Petitioner that his liability is discharged, mortgage is redeemed; therefore, the title deeds should be returned to the Plaintiff/Petitioner by the Registrar Original Side.

In Affidavit-in-Opposition, the Defendant denied all the allegations and contentions of the Petition.

The positive case of the Defendant is that Official Liquidator of Calcutta High Court after selling the assets of Naskarpara Jute Mills Company Limited recovered a sum of Rs.6,27,00,000/- only out of which Rs.5,00,00,000/- was paid to the Defendant being the sole secured creditor of the company. A sum of Rs. 56,79,95,152.29p is still outstanding and payable to the Defendant as on 02/02/2023, by the Naskarpara Jute Mills Company Limited. This amount is yet to be recovered and under circumstances if the order, as prayed, for return of the title deeds are allowed, the Defendant would suffer unwarranted prejudice, irreparable loss and injury.

It is further stated that application for restoration of T.A. 46 of 2000 is pending before Debt Recovery Tribunal – I.

According to the Defendant the instant application should be rejected.

Sum and substance of argument of Mr. Chowdhury appearing for the Plaintiff is that the agreement of guarantee was upto Rs.21,00,000/-. This is admitted and averred in the plaint of C.S. 608 of 1981, filed by the Defendant against Naskarpara Jute Mills Company Limited and others. Even if, without admitting the same, the plaint of that suit is accepted *prima facie*, then the claim against the present Plaintiff/Petitioner in C.S. 608 of 1981 is Rs.1,81,07,623.64p against which a sum of Rs.5,00,00,000/- had been paid by the Official Liquidator to the Defendant. Therefore, the debt is squarely discharged and the Plaintiff/Petitioner is relieved of the burden of mortgage. Therefore, there is no reason why the title deeds should be retained. Debt Recovery Tribunal – I has already dismissed the application being T.A. 46 of 2000 noting the payment of Rs.5,00,00,000/-. Pendency of application for restoration of the said proceeding shall not be a bar in allowing the relief to the Plaintiff/Petitioner.

Per contra, the Learned Counsel appearing for the bank submitted that firstly debt is not fully discharged; a sum of Rs.56,79,95,152.29p is still payable for which it is still necessary, until recovery, to retain the title deeds. Secondly, according to him, if the instant application is allowed, the same would be tantamount to adjudicating the main issue and giving the final relief to the Plaintiff.

I have heard rival submissions.

This Court, in terms of the Order dated 10/04/1989 directed to deposit the title deeds with the Registrar, Original Side in sealed cover with observation:

> *"Let it be clarified that this order would not confer any right on to any one of the parties as regards cancellation of the mortgage."*

The aforesaid Order dated 10/04/1989 did not comment anything or confer any right on the parties regarding cancellation of mortgage.

It is averred in the plaint that the Plaintiff/Petitioner deposited the title deeds relating to the property with intent to create security in respect of the said property for due discharge of Plaintiff's liabilities and or obligation to the

Defendant as guarantor under the first agreement of guarantee in repayment of dues of the said Naskarpara Jute Mills Company Limited upto the sum of Rs.21,00,000/- together with interest and charges. Deposit of the title deeds is an incident of mortgage. That is the way how security is furnished by the guarantor.

In terms of the Order dated 30.04.2012, Debt Recovery Tribunal took note in T.A. 46 of 2000 –

> *"In view of the above consent order and petition filed by the Official Liquidator as well as the Defendant no. 3 that since payment had already been made. There is nothing arrears to be paid. However, the Bank is neither filling his reply nor cooperating for disposal of the matter.*
>
> *Since the Bank is not appearing in the matter for long and under the above circumstance I think it is a fit case for dismissal of OA for non-prosecution and default.*
>
> *Hence, T.A. 46 of 2000 is dismissed."*

The Tribunal did not come to any conclusion that debt has been discharged on payment of Rs.5,00,00,000/- and mortgage is redeemed or should be redeemed or that the liability of the Plaintiff is discharged. It noted the payment of the said amount; it noted non-cooperation on the part of bank and dismissed the matter for default and non-prosecution only. This is not dismissal on merit on the ground that the outstanding amount of debt had been paid, liabilities of the principal borrower and the guarantor stands discharged and the mortgage stands redeemed.

Redemption of mortgage is the subject matter of the suit. This Court is to adjudicate upon whether mortgage stands redeemed along with other issues and questions. Mortgage was created by deposit of the title deeds. It is to be decided by this Court on the issue of redemption of mortgage, discharge of liability of the Plaintiff. Thereafter consideration of return of the title deeds should be taken up. In case the title deeds are returned prior to adjudication of the suit, the same will be tantamount to release the mortgaged security implying thereby redemption of mortgage. This will not only pre-judge the suit, but also will have direct bearing on the outcome of the suit affecting rights of the parties. Therefore, the prayer for returns of the title deeds cannot be allowed at this stage.

G.A. 04 of 2022 stands dismissed on merit.

Fix on 03/07/2023 for framing of issues.

(SUGATO MAJUMDAR, J.)