

Before M.S. Ramachandra Rao & H.S. Madaan, JJ.

INDERPREET KAUR—Petitioner

versus

ORIENTAL BANK OF COMMERCE AND OTHERS—

Respondents

CWP No.4073 of 2021

March 03, 2022

Constitution of India, 1950—Art. 226—Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Property mortgaged with Bank—Sold as per SARFAESI Act—Sale Certificate issued by Sub Registrar—Sale held to be complete—Chandigarh Housing Board cannot refuse to issue NOC or record transfer of the property in its records— Money decree for recovery of advance amount, in a case where specific performance of agreement to sell denied—Not a valid ground for Housing Board to deny issuance of NOC— Petition filed by purchaser allowed—Housing Board directed to issue NOC within 4 weeks.

Held that, If the said persons had mortgaged the property in favour of the Oriental Bank of Commerce and the property is sold under the provisions of SARFAESI Act, and a sale certificate is issued in favour of the petitioner free from all encumbrances which is also registered by the Sub Registrar, Chandigarh, respondent No.4 cannot refuse to issue NOC or make record of the transfer in favour of the petitioner by raising untenable grounds.

(Para 30)

Further held that, it may be that Jaspal Singh had filed Civil Suit No.11235/13 before the Civil Judge (Jr. Divn.), Chandigarh to enforce an agreement to sell dt. 24.04.2012, executed in his favour by Pardeep Aggarwal, and for a mandatory injunction directing the latter to obtain NOC and clearance certificate from respondent No.4, and to get sale deed executed in his favour in respect of the subject property. But, the relief of specific performance has been denied to the said person and only a money decree for recovery of the advance amount of 12 lakh was granted.

(Para 31)

Further held that, Jaspal Singh is entitled to execute the said decree but the existence of the said decree cannot come in the way of the petitioner seeking an NOC/ recording of the transfer in her favour by respondent No.1/Bank.

(Para 32)

Further held that, we may point out that no provision of any Statute is brought to our notice by respondent No.4 on the basis of which it can refuse to issue NOC or record the transfer of property in its records.

(Para 33)

Further held that, in our considered opinion, the transfer of title of the property in favour of the petitioner is complete in view of the issuance of sale certificate in favour of the petitioner and registration of the same by the Sub Registrar, UT, Chandigarh; and it is the duty of respondent No.4 to recognize the title of the petitioner and issue NOC to the petitioner; and also record the transfer in favour of the petitioner in its records.

(Para 34)

Navjinder S Sidhu, Advocate
for the petitioner

Gaurav Goel, Advocate
for respondents No.1 to 3

GS Wasu, Sr. Standing Counsel, with
Sandeep Singh, Advocate
for respondent No.4

M.S. RAMACHANDRA RAO, J.

(1) One Pardeep Aggarwal and Simmi Aggarwal had purchased Flat No.2852/1, First Floor, LIG, Sector 47-C, Chandigarh vide a title deed No.281 dt. 09.04.2010. They had mortgaged the said property to the Oriental Bank of Commerce.

(2) Since the bank loan was not paid, proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act'] were initiated by the said bank and an e-auction notice dt. 08.12.2019 was issued by the said bank proposing to sell the said asset on 27.12.2019 along with certain another assets.

(3) The petitioner in this Writ Petition became a highest bidder quoting Rs.26,20,000/- and deposited Rs.6,55,000/- on 31.12.2019.

(4) The petitioner paid the balance of sale consideration as well and the sale certificate dt. 21.03.2020 was issued in favour of the petitioner by the said bank. The sale certificate specifically states that the property is sold *free from all encumbrances*.

(5) The Oriental Bank of Commerce was amalgamated with the Punjab National Bank w.e.f. 04.03.2020, pursuant to a Gazette Notification issued by the Department of Financial Services, Ministry of Finance, Government of India.

(6) On 11.05.2020, Punjab National Bank (respondent No.1) wrote a letter to the Sub Registrar, Chandigarh for registration of the property sold by respondent No.1 in favour of the petitioner.

(7) Thereafter, registration of the property was also done in the petitioner's name on 27.05.2020 and a registration certificate dt. 27.05.2020 was issued to the petitioner by the Sub Registrar, Chandigarh.

(8) The petitioner also applied to the Chandigarh Housing Board (respondent No.4) on 29.01.2020 to issue 'No Objection Certificate' to her in respect of the said property.

(9) In reply thereto vide letter dt. 26.05.2020 (P8), respondent No.4 stated that a Civil Suit No.11235/2013 had been decreed in favour of one Jaspal Singh on 31.03.2017 by the Civil Judge (Jr. Divn.), Chandigarh and a decree of recovery of money of Rs.12,00,000/- with interest @ 9% per annum was within the knowledge of respondent No.4, and the petitioner should clarify the position whether the said decree was complied with or not.

On 10.06.2020, the petitioner again made a formal application for transfer of the property in her name quoting the sale under the Sale Certificate dt. 21.03.2020 in her favour and its registration on 10.06.2020 by the Sub Registrar, UT, Chandigarh, and enclosed the copies of the requisite documents.

(10) But respondent No.4 again wrote to the petitioner on 30.7.2020 that since the decree from the Court relates to the property in question, its compliance is required prior to proceeding further in the matter, and the petitioner should inform about the compliance of the Civil Court decreereferred to above in favour of the plaintiff therein.

(11) The respondent No.1-bank also requested respondent No.4 to issue NOC to the petitioner since the sale in her favour by the said Bank's predecessor Oriental Bank of Commerce was under the SARFAESI Act which was a special law and would prevail over the general law.

(12) A detailed response was given by respondent No.4 reiterating its earlier stand and contending that petitioner's request for re-transfer of the dwelling unit in her favour cannot be acceded to in view of Court decree dt. 31.03.2017 (P14), and till the matter is sorted out, her request for transfer of the said property in her favour cannot be accepted.

(13) Petitioner responded to the same on 11.06.2020 (P13) pointing out that in the said Civil Suit, Simmi Aggarwal, Oriental Bank of Commerce or respondent No.4 were not parties; the suit was dismissed as regards relief of specific performance which was sought by the plaintiff though a money decree was passed; and the defendant Pardeep Aggarwal was not stopped by the Court from selling or mortgaging the said property. It was also pointed out that one Clerk of respondent No.4 had been examined as PW2 in the said suit and he had admitted that Pardeep Aggarwal and Simmi Aggarwal had never applied for sale of the property to any third person from respondent No.4, and that there is a set pro forma of respondent No.4 for transfer of the property which has to be filled and adhered to by the seller and purchaser for transfer of the same; and even the plaintiff who was examined as PW3 stated that no documents were ever signed by him to obtain NOC from the respondent No.4 in respect of the said property and he had never approached the Oriental Bank of Commerce for obtaining the same.

(14) Ultimately, the petitioner got issued a Legal Notice dt. 02.11.2020 reiterating her claim but, respondent No.4 again reiterated its stand through a reply dt. 02.12.2020.

(15) Thereafter, the instant Writ Petition was filed.

The contentions of Counsel for Parties

(16) Counsel for the petitioner contended that once the petitioner had obtained a sale certificate on 21.03.2020 from respondent No.1, under Section 31-B of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the dues of the Bank would be having priority over dues; other dues included taxes, cesses and rates due to the Central Government, State Government or local authority; and

respondent No.4 cannot refuse to transfer the property in the name of the petitioner on the ground that execution petition for recovery of money under the money decree passed by the Civil Court filed by the third party, Jaspal Singh was pending. According to him, neither the said Civil Suit nor the execution proceedings have any impact on the property in dispute.

(17) It is also contended that the petitioner is a *bona fide* purchaser for consideration and she had acquired valid title over the property from respondent No.1 under Section 13 of the SARFAESI Act read with Rule 9 of the Security Interest (Enforcement) Rules, 2002 [for short, 'the Rules'] and since there is absolutely no dispute regarding ownership having passed on to the petitioner, NOC is required to be issued by respondent No.4 for transferring the above property in the name of the petitioner.

(18) It is also contended that respondent No.4 does not have any power to withhold the transfer of property in favour of the petitioner and cannot also refuse to issue NOC.

(19) Mr.Gaurav Goel, counsel for respondents No.1 to 3 supported the contentions of the petitioner.

(20) Respondent No.4 filed a written statement opposing grant of relief to the petitioner reiterating its stand that the Oriental Bank of Commerce and its debtors Pardeep Aggarwal and Simmi Aggarwal did not, at any point of time, apply for transfer of any dwelling unit in their name and that as per record it still stands in the name of one Sandeep Sharma.

(21) It is further stated that the Civil Suit No.11235/13 filed by Jaspal Singh against Pardeep Aggarwal had been decreed on 31.03.2017 and execution petition No.49/2019 is pending before the Court for 05.05.2022.

(22) It is also contended that the sale executed by the allottee in favour of Pardeep Aggarwal was never brought to the notice of respondent No.4 and it came to know about it only when respondent No.1-Bank informed on 05.02.2015 of the said fact.

(23) It is contended that Civil Suit is decreed for Rs.12,00,000/- with 9% interest per annum payable by the defendant and execution application No.49/2019 is pending, and so the dwelling unit in question cannot be transferred in the name of the petitioner till the said dispute is resolved. Respondent No.4 also pleads ignorance of the proceedings

under the SARFAESI Act.

(24) Mr.Gagandeep Singh Wasu, Sr. Standing Counsel for respondent No.4 reiterated the above contentions.

The consideration by the Court

(25) We may point out that respondent No.4 cannot dispute the sale certificate issued on 21.03.2020 by the Oriental Bank of Commerce to the petitioner and the recital therein that the sale of the scheduled property was made *free from all encumbrances* known to the Secured Creditor, or the fact that the Sub Registrar, Chandigarh had already registered the sale of the property in favour of the petitioner on 10.06.2020.

(26) There has been no objection raised by the erstwhile owners Pardeep Aggarwal and his wife Simmi Aggarwal in any Forum including the Debt Recovery Tribunal by filing a Securitization Application under Section 17 of the SARFAESI Act.

(27) It may be that in the records of respondent No.4, this property still stands recorded in the name of Sandeep Sharma. Even according to respondent no.4, the said Sandeep Sharma on 18.01.2010 applied for permission to sell it to Pardeep Aggarwal and Simmi Aggarwal, and NOC was issued on 08.03.2010 in their favour and admittedly a sale of the said property happened in favour of Pardeep Aggarwal and Simmi Aggarwal as per Title Deed No.281 dt. 09.04.2010.

(28) It may be that the transfer of ownership in favor of Pardeep Aggarwal and Simmi Aggarwal was not made in the records of respondent no.4, and the Oriental Bank of 's lien was also not marked over the property.

(29) Merely because in the records of respondent No.4, transfer of ownership is not recorded or lien is not recorded, that does not mean that there was no transfer of ownership in favour of Pardeep Aggarwal and Simmi Aggarwal or mortgage in favor of the Oriental Bank of Commerce. Once the formalities as prescribed by the Registration Act, 1908 and the Transfer of Property Act, 1882 were done, the said transactions would have to be accepted by respondent no. 4 as well.

(30) If the said persons had mortgaged the property in favour of the Oriental Bank of Commerce and the property is sold under the provisions of SARFAESI Act, and a sale certificate is issued in favour of the petitioner freefrom all encumbrances which is also registered by

the Sub Registrar, Chandigarh, respondent No.4 cannot refuse to issue NOC or make record of the transfer in favour of the petitioner by raising untenable grounds.

(31) It may be that Jaspal Singh had filed Civil Suit No.11235/13 before the Civil Judge (Jr. Divn.), Chandigarh to enforce an agreement to sell dt. 24.04.2012, executed in his favour by Pardeep Aggarwal, and for a mandatory injunction directing the latter to obtain NOC and clearance certificate from respondent No.4, and to get sale deed executed in his favour in respect of the subject property. But, the relief of specific performance has been denied to the said person and only a money decree for recovery of the advance amount of Rs.12 lakh was granted.

(32) Jaspal Singh is entitled to execute the said decree but the existence of the said decree cannot come in the way of the petitioner seeking an NOC/recording of the transfer in her favour by respondent No.1/Bank.

(33) We may point out that no provision of any Statute is brought to our notice by respondent No.4 on the basis of which it can refuse to issue NOC or record the transfer of property in its records.

(34) In our considered opinion, the transfer of title of the property in favour of the petitioner is complete in view of the issuance of sale certificate in favour of the petitioner and registration of the same by the Sub Registrar, UT, Chandigarh; and it is the duty of respondent No.4 to recognize the title of the petitioner and issue NOC to the petitioner; and also record the transfer in favour of the petitioner in its records.

(35) When neither the petitioner nor the Oriental Bank of Commerce is not even a party to the Civil Suit referred to above, it cannot ask the petitioner to wait till the execution petition is decided by Civil Court, and take an unreasonable stand that only then it will issue NOC in favour of the petitioner and record the transfer in the name of the petitioner in its records. Such a conduct is arbitrary and illegal and violates Article 14 and 300A of the Constitution of India.

(36) Accordingly, Writ petition is allowed and a Writ of Mandamus is issued to respondent No.4 to grant NOC and record the transfer of the property i.e. Flat No.2852/1, First Floor, LIG, Sector 47-C, Chandigarh in the name of the petitioner pursuant to the sale certificate dt.21.03.2020 as well as registered sale deed dt.27.05.2020 within *four weeks* from the date of receipt of copy of this order.

No costs.

Shubreet Kaur