

SUPREME COURT OF INDIA

State Bank of Travancore & Ors.

Vs.

R.Sobhana & Ors.

C.A.No.8625 of 2016

(Anil R.Dave and L.Nageswara Rao,JJ.,)

02.09.2016

JUDGMENT

L.Nageswara Rao,J.,

SLP (C) No.34536 of 2012

1. Leave granted.

2. The first respondent and her husband late Sh.P. K. Thampi Raj availed a loan of Rs.15,000/- from the first appellant-Bank on 04.07.1981 by creating an equitable mortgage by deposit of title deeds in respect of 1.800 sq. links in Survey No.1073 of 2001 of *Vanchiyoor* village, District *Thiruvananthapuram*. There was a default in payment of installments as a result of which the loan account became irregular. The Bank filed O. S. No.500 of 1983 in the Court of Subordinate Judge, *Thiruvananthapuram* for recovery of an amount of Rs.19,500/- together with interest at 13.5 per cent per annum. The suit was decreed on 25.08.1994. The property was put to auction in the execution petition filed by the Bank. As none came forward, the Bank bid for the property in the auction. A sale certificate was issued in favour of the Bank on 22.02.1994.

3. The Bank sold the said property in 2007 by inviting tenders for Rs. 10,10,001/-. The first respondent along with her husband approached the Bank with a request to return the excess amount which the Bank secured by way of sale of the property. They also sought for payment of rent that the Bank earned by letting out the property for the period 08.07.1996 to May, 2006. It was quantified at Rs.1,41,600/-. As the Bank did not respond favorably, respondent No.1 along with her husband filed W.P. (C) No.32911 of 2011 in the High Court of Kerala seeking a Mandamus to the Bank to return the excess sale amount in respect of the property along with the rent collected by the Bank for the property from 08.07.1996 to May, 2006. A counter affidavit was filed on behalf of the appellants in which it was stated that the Bank became the absolute owner of the property after a sale certificate was issued on 22.02.1994. The Bank relied upon Section 65 of the Code of Civil Procedure to plead that it had perfected its right, title, interest and possession over the property covered by the sale

certificate. The Bank also pleaded that the Writ Petitioners did not have any right over the property which was purchased by it in the auction conducted by Court.

4. By a judgment dated 28.02.2012, a learned Single Judge of the High Court of Kerala dismissed the writ petition (C) No.32911 of 2011 by holding that the petitioners did not have any right in the property after the title had passed on to the Bank in 1994 and they cannot have any claim in respect of the rent received for the property or the proceeds of the sale conducted by the Bank.

5. Aggrieved by the judgment of the learned Single Judge, the first respondent along with her husband filed writ appeal No.1077 of 2012. During the pendency of the appeal, the first respondent's husband died. The first respondent's children were impleaded as appellants in the appeal. By an order dated 15.06.2012, a Division Bench of the High Court of Kerala took note of the fact that the first respondent was paralyzed on account of meningitis, one daughter was mentally retarded and another son was a psychiatric patient. In view of the misery faced by the respondent's family the Managing Director of the Bank was directed to consider sharing of a substantial amount of profit accrued to the Bank by way of sale of the property with the respondents.

6. On being informed that the Bank was not willing to pay the respondents a part of the sale proceeds, another interim order was passed on 19.07.2012 asking the Board of the Bank to consider the directions given by the Court by its earlier order dated 15.06.2012. The Board in its meeting dated 10.09.2012 decided that the respondents are not entitled for any payment from the proceeds of the sale of the property.

7. Writ Appeal No.1077 of 2012 was finally heard and allowed on 25.09.2012 by directing refund of Rs.6.5 lakhs to the respondents within a period of two weeks from the date of production of copy of the judgment. Assailing the legality and validity of the said judgment, the Appellants have filed the above appeal.

8. Mr.R.P.Bhatt, Senior Advocate appeared for the appellants and submitted that the High Court erred in allowing the writ appeal after recording a finding that the Bank did not indulge in any illegality. According to him, the High Court ought not to have made adverse remarks against the Bank in the matter of its business transactions. Mr. Bhatt also submitted that the entire transaction could not have been dubbed as unfair. In any event, according to Mr. Bhatt, the respondents cannot assert any legal right to claim a share in the proceeds of sale of the property by the Bank.

9. Mr.Renjith B. Marar, Advocate appearing for the respondents submitted that the respondents are not only in financial distress but also are suffering from serious illness. He was very fair in submitting that though the respondents are not claiming any legal right over the property they are entitled for some payment by taking into account the fact that they took a loan of Rs.15,000/- and their property was sold by the Bank for Rs.10 lakhs.

10. It is clear from the facts narrated above that the Bank has not indulged in any illegality either in purchasing the property in the auction conducted by the Court in 1992 or in the sale of the property in the year 2007. The respondents have no right in claiming any share in the proceeds of the sale of the property after the Bank became the owner of the property in 1992. We find substance in the submissions made by Mr. R. P. Bhatt that the Division Bench of the High Court should not have made scathing remarks about the conduct of the Bank. We are of the opinion that the adverse comments made by the Division Bench against the Bank are unwarranted and deserve to be expunged. The High Court erred in directing payment of Rs.6.5 lakhs to the respondents towards their share in the proceeds of sale of property by the Bank in 2007.

11. Having dealt with the matter on merits in favour of the appellant- Bank, we are of the opinion that in the peculiar facts of the case the respondents are entitled for some relief. They have availed a loan of Rs.15,000/- and due to the non payment of the loan they have lost a property which was sold by the Bank for Rs.10 lakhs in 2007. It is clear from the record that the respondents are suffering from acute illness apart from severe financial distress. Taking into account the extreme adversity which the family of respondent is facing, we are of the opinion that the respondents are entitled for a payment of Rs.5 lakh (Rupees Five Lakh only) as ex-gratia. To do complete justice in the matter, we direct the Bank to pay Rs.5 lakhs to the respondents within a period of eight weeks.

12. The appeal is disposed of in terms of the above directions.