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PUNJAB & SIND BANK

v.

PUNJAB BREEDERS LTD. & ANOTHER

(Civil Appeal No. 3197 of 2016)

B

MARCH 29, 2016

[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

C

Compromise: Settlement – One Time Settlement (OTS) Scheme – Appellant-bank offered OTS to the first respondent for settlement of entire dues to the bank on payment of Rs.5.42 crores subject to bank's right to recompense that the mortgaged properties shall not be sold within a period of 3 years and if properties are sold within next 3 years then parties shall obtain prior permission of the bank and share with the bank 50% of increase in fair market value of the properties which is Rs.8.82 crores at the time of sanction of this

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settlement – In response to the offer of OTS, the first respondent managed to enter into an agreement with the second respondent for sale of half of the mortgaged property and pursuant to that agreement, whole amount of Rs.5.42 crores as per offer made by the bank was paid in terms of OTS – However, bank refused to

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settle the accounts and release the mortgage on the ground that the third party interest having been created, the bank was entitled to 50% of fair market value – High Court directed the bank to accept the payment of Rs.5.42 crores in full and final settlement of all the claims as per the OTS proposed and release the mortgaged property

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with further direction not to sell the property for a period of three years – Whether appellant-bank is entitled to 50% of the increase in fair market value of property fixed at the time of settlement in terms of OTS – Held: The creation of third party interest or arrangement by way of agreement for sale within the three year

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period is different from sale – Admittedly, sale was not made within the period of three years of settlement – The only restriction was on sale of the property within three years of the settlement – That admittedly having not been done, the appellant cannot rest any claim under law for the share of the increase in fair market value by way of recompense – Appellant-bank directed to release the title deed of

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the mortgaged property to the first respondent and also handover the possession of the property to the first respondent. A

Dismissing the appeal, the Court

HELD: 1. As per the OTS proposal dated 01.03.2012, the restriction is only on sale of the mortgaged property for a period of three years, and in case, the properties are sold within the said lock in period of three years, the same should be done with the permission of the bank and that the first respondent should share 50% of the increase in fair market value of the property, fixed at the time of sanction of the settlement. [Para 9][880-A-B] B

2. The undisputed factual position is that the appellant-bank has not released the mortgage. The possession of the mortgaged property has not been delivered to the first respondent so far. The three year lock in period expired on 01.03.2015. The creation of third party interest or arrangement by way of agreement for sale within the three year period is different from sale. Admittedly, sale has not been made within the period of three years of settlement. The scheme has not provided for any other restriction of involvement of third party interest for settlement of the dues. The only restriction is on sale of the property within three years of the settlement. That admittedly having not been done, the appellant cannot rest any claim under law for the share of the increase in fair market value by way of recompense. There is nothing to be recompensed since the bank has not suffered or lost anything. The appellant-bank is directed to release the title deed of the mortgaged property to the first respondent and also handover the possession of the property to the first respondent within two weeks. [Paras 10 and 11] [880-C-E] C D E F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3197 of 2016.

From the Judgment and Order dated 27.09.2012 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 4792 of 2011 (O&M). G

Rajinder Wali, B. K. Satija, Advs., for the Appellant.

Nidesh Gupta, Parag Tripathi, Sr. Advs., Tarun Gupta, Puneet, H

- A Atul S. Mathur, Ms. Priya Singh, M/s. Khaitan & Co., Advs. for the Respondents.

The Judgment of the Court was delivered by.

KURIAN, J. 1. Leave granted.

- B 2. The short question arising for consideration in this case is whether the appellant-bank is entitled to fifty per cent of the increase in fair market value of property fixed at the time of settlement, in terms of the One Time Settlement (OTS) Scheme.

- C 3. As per letter dated 01.03.2012, the appellant offered OTS to the first respondent for settlement of the entire dues to the bank on payment of Rs.542 lakhs, subject to a few conditions. The one relevant for the purpose of the present appeal reads as follows:

- D “The OTS shall be subject to Bank’s right to recompense that the mortgaged properties shall not be sold within a period of three years and if the properties are sold within the next three years;

a. The parties obtain prior permission of the bank.

b. The parties shall share with the bank 50% of increase in FMV of the properties which is Rs.882.00 lacs at the time of sanction of this settlement.”

- E 4. Prior to the OTS offer, the bank had made several attempts to sell property mortgaged by the first respondent. Since the highest offer was of Rs.5.40 crores, the bank had given an opportunity to the first respondent, by letter dated 03.03.2011, to get any buyer for more than 5.40 crores by 16.03.2011, and if not, the bank would be confirming the sale of Rs.5.40 crores. Thereafter, the OTS offer was made for settlement of the dues at Rs.542 lakhs by letter dated 01.03.2012. In response to the offer made by the bank, the first respondent managed to enter into an agreement with the second respondent for sale of half of the mortgaged property and pursuant to that agreement, the whole amount of Rs.5.42 crores, as per the offer made by the bank, was paid in terms of the OTS. However, the bank declined to settle the accounts and released the mortgage on the ground that the third party interest having been created, the bank was entitled to 50% of the fair market value.

- H 5. The High Court, as per the impugned judgment, directed the

bank to accept the payment of Rs.5.42 crores in full and final settlement of all the claims, as per the OTS proposed on 01.03.2012 and release the mortgaged property with a further direction not to sell the property for a period of three years from 01.03.2012. Aggrieved, the appellant-bank is before this Court. A

6. Following are the main questions of law raised in this appeal: B

“E. Whether by the impugned order, the Hon’ble High Court could have allowed the Writ Petition and directed the petitioner to accept the amount of Rs.5.42 crores and release the sale deed, notwithstanding the fact that as per terms of one time settlement sanction, the respondent No.1 could not have alienated the mortgaged property for three years? C

F. Whether by the impugned order, the Hon’ble High Court has failed to consider that as per terms of one time settlement dated 01.03.2012, there was bar on alienation for three years and if the properties are sold within the next three years, the respondent No.1 had to take prior permission from the petitioner and share 50% of increase in Fair Market Value of the property which was Rs.882 lacs at the time of sanction of the settlement? D

G. Whether by the impugned order, the Hon’ble High Court failed to consider that inspite of bar on alienation as per sanction dated 01.03.2012, duly accepted by respondent no.1, the respondent No.1 clandestinely entered into an Agreement to Sell with respondent No.2 in respect of land measuring 11855.5 sq.yds. for an amount of Rs.4.95 crores, without either seeking prior permission from the petitioner Bank and/ or sharing 50% increase in the Fair Market Value of the Property?” E F

7. Heard the learned Counsel appeared on both sides.

8. The main contention advanced by the learned Counsel for the appellant-bank is that the first respondent having entered into agreement for sale of the property, as per OTS, the bank is entitled to 50% of the fair market value in addition to the OTS payment. It is further submitted that the first respondent having created a third party interest, the appellant-bank is entitled to claim the fair market value. G H

- A 9. We are afraid, the contentions cannot be appreciated. As per the OTS proposal dated 01.03.2012, the restriction is only on sale of the mortgaged property for a period of three years, and in case, the properties are sold within the said lock in period of three years, the same should be done with the permission of the bank and that the first respondent should share 50% of the increase in fair market value of the property, fixed at the time of sanction of the settlement.

- C 10. The undisputed factual position is that the appellant-bank has not released the mortgage. The possession of the mortgaged property has not been delivered to the first respondent so far. The three year lock in period expired on 01.03.2015. The creation of third party interest or arrangement by way of agreement for sale within the three year period is different from sale. Admittedly, sale has not been made within the period of three years of settlement. The scheme has not provided for any other restriction of involvement of third party interest for settlement of the dues. The only restriction is on sale of the property within three years of the settlement. That admittedly having not been done, the appellant cannot rest any claim under law for the share of the increase in fair market value by way of recompense. There is nothing to be recompensed since the bank has not suffered or lost anything.

- E 11. Thus, we see no error in the view taken by the High Court. The appeal is dismissed. The appellant-bank is directed to release the title deed of the mortgaged property to the first respondent and also handover the possession of the property to the first respondent within two weeks.

- F 12. There shall be no order as to costs.

Devika Gujral

Appeal dismissed.