

IN THE SPECIAL COURT AT BOMBAY

Constituted under the Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992

CUSTODIAN'S REPORT NO.4 OF 2022

IN

CUSTODIAN'S REPORT NO.11 OF 2021

Custodian's Report seeking requisite information from State Bank of India as per order dated 18th February 2022.

Mr. Hormaz Daruwalla, i/by Ms. Shilpa Bhate, for the Applicant.

Mr. Abhishek Bhaduri for State Bank of India.

CORAM : A.K. MENON, J.

JUDGE, SPECIAL COURT

DATE : 1ST JULY 2022.

P.C. :

1. Mr. Bhaduri, learned Advocate for State Bank of India has today tendered a compilation-of-documents, pursuant to order dated 22nd April 2022. He submits that the Debt Recovery Tribunal No.III, Mumbai has issued certified copy of the affidavit-of-documents, along with annexures thereto, filed by the State Bank of Mysore dated 29th March 2004. Mr. Bhaduri states that, as per his instructions, recovery proceedings, being RP 517/2016, had been initiated but have since been closed pursuant to an order passed by the DRT-2 dated 10th April 2019. He has tendered a certified copy of the order closing recovery proceedings and granting liberty to the bank to reopen the matter and locate other assets with proof of ownership of the property. While the order discloses

that the bank has lost interest in the proceedings despite having mortgaged property, the certified copy of the affidavit-of-documents, which is filed today in the additional compilation, does not reveal deposit of any document of title. It only mentions Mortgage Confirmation Letter. Creation of an equitable mortgage is not disclosed.

2. The judgment of the Debt Recovery Tribunal is still not available. The Sanction Order and terms of the proposed sanction contemplated equitable mortgage of properties belonging to Niranjana Shah. The loan documentation appears to have been executed by various persons; however, in one of these documents at page 98 of the compilation, it appears that there is a letter addressed to State Bank of Mysore by Niranjana Shah. That letter is dated 24th January 2001 and it is marked as Exhibit-46 in O.A. No.616 / 2001. The contents of the letter suggests that Niranjana Shah may have deposited title deeds of Flat No.301 in Vandana Co-op. Housing Society Ltd., Janki Kutir, Juhu, Mumbai-400049, with the bank on 24th January 2001, but there is no mention of the documents actually deposited, if at all.

3. Mr. Daruwalla submits that the co-operative society housing the flat has no record about the mortgage. It appears that save and except for this letter, which is described in the list of documents as Mortgage Confirmation Letter, title deeds have not been produced before the DRT. The affidavit-of-documents

does not disclose any title deeds having been produced. Only particulars of immovable property and mortgage confirmation letters that have been referred to in the list of documents.

4. The prayers in the Original Application No.616 of 2001 inter alia sought a declaration that the defendants agreed to create a mortgage. The prayers do not include a declaration that there is a valid mortgage in their favour although sale of the property is contemplated. The judgment of the Debt Recovery Tribunal, which was supposed to be obtained, is still not placed before this court despite the order dated 22nd April 2022. At this stage, Mr. Bhaduri states that he is not aware about the nature of the application made for issuance of certified copy and that he would obtain a copy of the judgment in O.A. 616 of 2001 as expeditiously as possible.

5. The letter dated 24th January 2001 appears to have been listed at item 4 in the affidavit-of-documents, but actual title deeds do not appear to be with the bank. Mr. Bhaduri states that he has no instructions on that aspect and that he seeks time to file an affidavit dealing with this aspect of the matter. Mr. Bhaduri seeks leave to file additional compilation of documents, including the certified copy of the order dated 10th April 2019 passed by the DRT-2 in RP/517/2016 along with an affidavit. He undertakes to provide copies of the same to the Custodian.

6. Prima facie, it appears that the bank does not hold any documents and if that is so, there is no question of any mortgage having been created and the bank's conduct in not having prosecuted this application for recovery is an indication of the fact that even after merger with State Bank of India, no attempts had been made to enforce and foreclose the mortgage, if any.

7. Accordingly, I pass the following order :-

- (i) The affidavit to be filed on behalf of the State Bank of India shall disclose what documents, if any, were deposited by Mr. Niranjana Shah on 24th January 2001. List of such documents shall be set out in the affidavit and current custody of those documents shall be disclosed in the affidavit. Affidavit to be filed within two weeks from today.
- (ii) By virtue of the order dated 22nd April 2022, the DRT is once again directed to provide copy of the judgment passed in O.A. 616 of 2001 within a period of two weeks of an application being made.
- (iii) Mr. Bhaduri is directed to make an application seeking certified copy of the judgment passed by the DRT in O.A. 616 of 2001 within one week from today.

- (iv) Meanwhile, time to file vakalatnama on behalf of the State Bank of India is extended by one week from today.
- (v) In the meanwhile, copy of the order dated 10th April 2019 tendered today shall be returned to Mr. Bhaduri by the registry after this order is uploaded in view of his undertaking to file the same along with the affidavit.
- (vi) Since nothing has been placed on record to indicate the bank's interest beyond the Mortgage Confirmation Letter dated 24th January 2001, the affidavit shall state clearly whether the bank has any objection to the sale of the flat by the Custodian while the sale proceeds will be lying with the Custodian even post sale. The bank will have liberty to apply in case it is able to establish that it has a valid mortgage in its favour.
- (vii) Upon such affidavit being filed, the Custodian is at liberty to file a fresh report for sale of the property, if so advised.
- (viii) Custodian's Report No.4 of 2022 is disposed in the above terms.

[A.K. MENON, J.]