

IN THE SPECIAL COURT
(TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992
CUSTODIAN'S REPORT NO. 13 OF 2021
WITH
MISCELLANEOUS APPLICATION NO. 37 OF 2019

Canbank Financial Services Ltd.	...	Applicant
vs.		
Pallav Sheth	...	Respondent

Mr. Pradeep Sancheti, Senior Advocate a/w. Mr. Raunak Mukherjee i/b. Mulla & Mulla, CBC for the Applicant in SPMA/37/2019 and for Canbank Financial Services in SPCR/13/2021.

Mr. Aseem Naphade a/w. Mr. Swapnil Newaskar for FFSL.

Mr. Gandhar Raikar i/b. M/s. Shilpa Bhate and Associates for Respondent no. 3 in SPMA/37/2019 and for the Applicant in SPCR/13/2021.

Mr. Ketan Trivedi, Official Assignee and Mr. E. B. Sivakumar, Deputy Official Assignee present.

CORAM: A.K. MENON, J.

Judge, Special Court

DATE : 4th FEBRUARY, 2022

[THROUGH VIDEO CONFERENCE]

P.C. :

1. By this Miscellaneous Application the applicant-Canbank Financial Services Ltd. holder of a decree against respondent no. 1 since declared insolvent and represented today by respondent no. 4-the Official Assignee, seeks various directions against the Custodian for sale of certain shares and

sale of immovable properties. These properties were believed to be attached by the Custodian and which are capable of being sold as contemplated in the order dated 14th October, 1996 passed by the Special Court in Miscellaneous Application No. 393 of 1995 in Miscellaneous Application No. 193 of 1993. The applicant also seeks a direction to release amount(s) recovered by the Custodian from the sale of these properties.

2. Perusal of the Custodian Report no. 13 of 2021 reveals that the following four properties that remain unsold viz. (i) a residential flat admeasuring 4000 sq.ft at 5th Floor, Moonlight Building, Sachivalaya Road, Mumbai-400 020, (ii) a residential flat at 3rd Floor, Green Field, Dinshaw Vatcha Road, Churchgate, Mumbai- 00 020 (iii) Commercial premises at 1st Floor, Gundecha Chambers, Fort, Mumbai and (iv) premises at Trinity Circle, M. G. Road, Bangalore.

3. The prayers in the report seek :

(a) directions of the Custodian to carry out valuation of the tenancy rights in respect of the residential flat located at 3rd floor, Green Field in anticipation of transfer of tenancy and take steps for transfer of tenancy rights under the Maharashtra Rent Control Act, 1999 by inviting quotations from the public

(b) to permit the Custodian to encash a fixed deposit of the notified party in the attached bank account and pay over a sum of Rs.52,46,575/- to the applicant-decree holder. As far as the first prayer is concerned I see no difficulty in allowing that prayer, but as far as the second prayer is concerned this amount pertains to the property at item no. 8 viz. the property at Trinity Circle Bangalore. This relief is opposed by FFSL, the notified party.

4. Let me deal with the Miscellaneous Application first. Mr. Sancheti, learned Senior Counsel appearing in support of the applicant has relied upon the said order dated 14th October, 1996 in which the Special Court observed that the Court could consider sale of properties identified in that order. The application is made on the basis that respondent no.1 had failed and neglected to remit amounts due and payable to the applicant although he had undertaken to discharge his liability in a manner set out in letter dated 15th July, 1992 copy of which is at Exhibit B to the application. In order to clear the liability, respondent no. 1 is said to have created equitable mortgage of immovable properties by having separately delivered title deeds in respect of those properties to the applicant. The description of the properties is set out in Annexure I to the letter and list of title deeds are also said to be included at Annexure II. The applicant has now drawn my attention to the list of properties referred to in paragraph 8 of respondent no.1's letter dated 15th

July, 1992, in Exhibit B. The list of title deeds is conspicuously not included as part of the Exhibit. The list is found elsewhere in the suit proceedings filed by the applicant.

5. Admittedly there is no description of the documents allegedly deposited in creation of the mortgage in the copy of the letter annexed, but in the course of submissions Mr. Sancheti has invited my attention to the affidavit in reply filed by the applicant to the Custodian Report No. 13 of 2021 and has pointed out that Exhibit-1 to the Notice of Motion no. 1517 of 1997 which the applicant had filed, contained a list of the properties. Exhibit-2 inter alia sets out documents said to have been deposited evidencing creation of equitable mortgage in respect of various properties. While reference is made to such agreements and documents, some of these properties have already been sold. A table containing a list of these properties and their current status is reproduced below :

STATUS OF PROPERTIES

Sr No	Particulars	Residential/ Commercial	Mortgaged Yes/No	Sold Yes/No
1	5 th Floor, Moonlight Building, Sachivalaya Road, Mumbai-400 020.	Residential	No	Not attached. Cannot be sold
2	Laxmi Bhavan, D-Road, Churchgate, Mumbai-400 020	Residential	Yes	Sold. Proceeds paid to the Applicant

3	3 rd Floor, Green Field, Dinshaw Vatcha Road, Behind Eros Cinema, Churchgate, Mumbai-400 020	Residential	<u>No</u> Tenanted	Tenancy right attached. Proposed to be transferred
4	13 th Floor, Mittal Tower, B Wing, Nariman Point, Mumbai-400 021	Commercial	Yes	Sold. Proceeds paid to the Applicant.
5	5 th floor, Mittal Towers, C-Wing, Nariman Point, Mumbai – 400 021	Commercial	Only shares pledged	Sold. Proceeds invested by Custodian.
6	1 st floor, Gundecha Chambers, Nagindas Master Road, Fort, Mumbai-400 001	Commercial	No	Not attached. Cannot be sold.
7	Ground Floor, No. 81, Lavelle Road, Bangalore-560 001	Residential	Yes	Sold. Proceeds paid to the Applicant.
8	Trinity Circle, M.G. Road, Bangalore	Commercial	No	Not attached. Cannot be sold.

6. From the above we find that the four unsold properties are

1. 5th Floor, Moonlight Building, Sachivalaya Road, Mumbai-400 020,
2. 3rd Floor, Green Field, Dinshaw Vatcha Road, Behind Eros Cinema, Churchgate, Mumbai-400 020
3. 1st floor, Gundecha Chambers, Nagindas Master Road, Fort, Mumbai-400 001
4. Premises at Trinity Circle, M.G. Road, Bangalore

7. **Moonlight** :- The property listed at item no. 1 in Exhibit B at Moonlight Building. While Moonlight property is also said to have been

mortgaged enquires made by the Custodian have now revealed that this property was never owned by respondent no.1 nor was he a tenant. Custodian Report no. 13 reveals that while dealing with the four unsold properties and its status, the Custodian had issued a letter to the Secretary of Moonlight Building to enquire about the status of the property since respondent no. 1 had in his affidavit of 14th December, 1994 in Miscellaneous Application no. 343 of 1994 stated that the property was tenanted and the tenancy had been surrendered to the landlord in 1992. The court in its order dated 14th October, 1996 in Miscellaneous Application no. 393 of 1995 had also made note of the said surrender of tenancy. A copy of the said affidavit has been placed on record in which respondent no.1 states that he was tenant in Moonlight which was surrendered in August, 1992, since disposal of the Moonlight property was still being pursued by the applicant, this court had directed the Custodian to obtain necessary particulars in respect thereof.

8. The Custodian has since filed an additional affidavit of Esmat A Shiakh dated 30th December, 2021 and placed on record the correspondence addressed to the Secretary, Moonlight Building and the response has been received by the Custodian from one Nargis A. R. Antulay landlady of Moonlight building. Referring to the letter dated 29th November, 2021 by the Custodian, the landlady has disclosed that the building Moonlight was owned

by her jointly with her son one Naveed Antulay as joint landlord since 1992. Her son expired in April, 2020 and she is now the sole owner of the building. Having checked her records she confirms that building Moonlight is of ground and six upper floors but there is no residential flat admeasuring 4000 sq. Ft having five bedrooms as contended by the Custodian. She had had no tenant named Pallav Sheth in the building or in any of the premises in the building. Even the prior landlord had not named Pallav Sheth as one of the tenants or occupants in any of the premises in the building when Moonlight was transferred to her and her late son. That the only tenant who surrendered tenancy was in the 9th floor and fresh tenancies were created in favour of some family members of the landlady. She has therefore stated in paragraph 6 that she is unaware whether the erstwhile tenant of flat on the 4th floor had entered into any dealings with Pallav Sheth but at not point did Pallav Sheth acquire or hold any tenancy rights in respect of any flat. She has relied upon certain court proceedings between tenant of 4th floor and herself as landlord. Under these circumstances I find that there is no substance in the applicants contention that respondent no. 1 was a tenant of premises in Moonlight building. The Moonlight property was not attached property and the Custodian cannot proceed against the flat in Moonlight.

9. **Laxmi Bhavan** : - The property at item no. 2 being residential flat at Laxmi Bhavan, D-Road, Churchgate, Mumbai-400 020 ["Laxmi Bhavan"] described in item no. 2 has already been sold. Likewise commercial premises on the 13th Floor, Mittal Tower, B Wing, Nariman Point, Mumbai-400 021 described in item no. 4 ["Mittal Tower, B-Wing"] and the commercial premises at the 5th floor, Mittal Towers, C-Wing, Nariman Point, Mumbai – 400 021 described in item no. 5 ["Mittal Tower, C-Wing"] has also been sold.

10. **Green Field** : - Today what we are really concerned with is the disposal by transfer of tenancy rights of premises situated at 3rd Floor, Green Field, Dinshaw Vacha Road, Behind Eros Cinema, Churchgate, Mumbai-400 020 ["Green Field Flat"]. Admittedly the only property that is now capable of being disposed to recover money is by way of transfer of tenancy in respect of the Green Field property. That can occasion only with the consent of the landlord and at this stage the Custodian seeks to carry out valuation and kick-start the process of transfer of tenancy of these premises. This is an aspect which can be considered at a later stage, if and after the report is allowed in terms of prayer clause (a).

11. **Gundecha Chambers** : -One of the four properties with which we are now concerned are commercial premises at 1st floor, Gundecha Chambers, Nagindas Master Road, Fort, Mumbai-400 001 ["Gundecha Chambers"]

which respondent no.1 claims to have owned and mortgaged. This property as the Custodian has now ascertained was and is not the property of respondent no.1 at all, since the Custodian has now obtained documentation from the society housing the said commercial premises at Gundecha Chambers which establishes title of its current owners. The Custodian had called upon the Secretary of Gundecha Chambers Co-operative Housing Society to furnish documents pertaining to the unit described at item no. 6 of Exhibit B to the application filed by the applicant. In this respect the Society has furnished numerous documents including the Deed of Conveyance of the property dated 8th July, 1993 evidencing sale by M/s. Pravinchandra Muljibhai Dharia of the premises along with the relevant shares to one Divyesh Jayantilal Parikh and Sonal Divyesh Parikh. The records of the society do not reflect ownership of the notified party as on date of his notification in 6th October, 2001. As on 8th July, 1993 the property is shown to have been transferred to Divyesh Jayantilal Parikh and Sonal Divyesh Parikh who was found to be in possession at the material time.

12. Further enquiries with the society have now revealed that Divyesh Jayantilal Parikh and Sonal Divyesh Parikh have vide sale deed 28th November, 2007 sold and transferred these shares to occupy premises to one M.L. Ranjit and Suman Ranjit. Copies of the share certificates has also been

enclosed by the society, as also the NOC issued by the society in the year 2007 to the Parikhs. Vide the NOC the society confirmed that they had no objection to the sale of the shares of Divyesh Jayantilal Parikh and Sonal Divyesh Parikh Parikh's to M.L. Ranjit and Suman Ranjit. Indeed if this was attached property at the relevant time, the Custodian would have made an appropriate application. Thus in my view there is no occasion to consider passing any further orders in respect of property at Gundecha Chambers which was also not owned by respondent no. 1 and therefore not attached property.

13. **Lavelle Road** : -Residential apartment admeasuring 4500 sq.ft on the Ground Floor, No. 81, Lavelle Road, Bangalore-560 001 is also said to have been sold and monies have been paid over.

14. **Du Parc, Trinity Circle** : - The last property is the Du Parc premises. The Custodian has found that no documents in respect of property at Trinity Circle are available and this is now an admitted position. Thus absent documents of title there could hardly have been a mortgage. The other question is whether it was attached property nevertheless. Here again the Custodian has learnt that the property did not ever belong to respondent no. 1.

15. With specific reference to the commercial premises at Trinity Circle, Bangalore is concerned, although it is admitted position that no document of title was deposited with the applicant, it is however admitted that respondent no. 1 had made certain payments to the builders who were constructing upon the said property. According to FFSL the amount of Rs.52,46,575/- forms part of the monies refunded by the builders of the property at Trinity Circle, Bengaluru and which amount is lying in the account of FFSL. Mr. Newaskar submitted that this amount ought not to be paid out as part of the entitlement of the applicant, if any. There is a history to this transaction which needs to may have to be gone into at this stage. The property was not in existence at the material time and it appears that respondent no. 1 claimed that he was owner of the property and had offered to create mortgage in favour of the applicant without having acquired any right. As we have already seen no document of title was deposited by respondent no. 1 to the applicant.

16. Respondent no.1 appears to have has approached one M/s. Sreenivasa Builders, Bengaluru to purchase the property but he did not complete the transaction. The Custodian has since called upon M/s. Sreenivasa Builders to furnish information in relation to the present status of the said property. In response thereto vide letter dated 24th February, 2021 M/s. Sreenivasa Builders have informed the Custodian of the fact that the property in

contemplation was on the 7th floor of the building known as Du Parc, Trinity Complex, Bengaluru admeasuring 13602 sq. ft. The builders have admitted that earnest money deposit of Rs. 50,00,000/- had been received and confirmed respondent no. 1 had approached the builder in 1991 with the intention of purchasing 7th Floor in Du Parc. The price was also agreed upon and relying upon representations of respondent no.1, the builder had agreed to sell the property subject to receipt of full consideration. A sum of Rs.50,00,000/- was paid as earnest money deposit. However respondent no. 1 had failed to complete the sale by paying the balance consideration.

17. In 1993 the builders are said to have called upon respondent no.1 to make balance payment and notify him that they would be constrained to terminate the deal and forfeit the Earnest deposit money. Although there was no response to the demand, the builders meanwhile learnt of the fact that respondent no. 1 had been notified on account of involvement in Security Scam of 1992 and that the court had passed orders directing the Earnest Money to be deposited in this court. Accordingly the builders deposited the sum of Rs. 50,00,000/- on 18th November, 1996. Copy of the pay order caused to be issued by the builders is also annexed to the correspondence. There is no dispute that the amount was received by the Special Court registry and has since been invested. On or about 20th June, 1997 pursuant

to order passed by the Special Court on 3rd April, 1997, a sum of Rs.52,46,575/- then lying invested with the Office of the Special Court was transferred to the Custodian. The Custodian thus holds that amount and accrued interest along with the other amounts is in the attached account of FFSL. It is therefore clear that there was no sale in favour of respondent no.1.

18. Although Mr. Sancheti submitted that the decree dated 14th October, 1996 records that the properties were mortgaged, I find that there was no factual enquiry in this respect and the court proceeded on the basis of the letter dated 15th July, 1992. It is also appropriate that we consider the fact that the Custodian has in its affidavit dated 2nd January, 2020 and additional affidavit dated 23rd January, 2020 clearly set out the fact that the property at Trinity Circle viz. the property at Du Parc, Trinity Complex Bengaluru was never owned by respondent no. 1. That read with the fact that the builder has confirmed that no sale took place, no document has been executed. An observation in the decree that the property is mortgaged cannot in my view entitle the applicant to claim that the said property stood attached and can be proceeded against under a decree passed.

19. Mr. Yogesh Patel, Director of FFSL has filed an affidavit dated 17th January, 2022 opposing the payment of money of Rs. 52,46,575/- since

according to the deponent the money was transferred to FFSL much before notification of Pallav Sheth who was notified on 6th October, 2001. Pursuant to order dated 10th October, 1996 the EMD amount was deposited in court and has since been paid over to the Custodian vide order dated 3rd April, 1997. There is no occasion to treat that property or EMD as attached property.

20. In my view this contention must be accepted because the property was not having owned by respondent no.1. There was no occasion to treat the amount of EMD as property of respondent no. 1 and as security of the applicant since the amount was paid over to the Custodian A/c-FFSL in 1997 whereas respondent no. 1 was notified on 6th October, 2001, the amount of Rs. 50 lakhs EMD could not have been property in favour of the applicant in any stretch of imagination and hence the claim of the Custodian to make payment of the said amount to the applicant cannot be acceded to. In effect the Du Parc, Trinity Circle property never was attached property. Moreover it has been now confirmed that the property has been sold to Bharat Petroleum Corporation Limited and hence it is beyond the reach of the applicant or the Custodian. It is pertinent to note that the refund of EMD occasioned in 1996, whereas respondent no. 1 was notified only in 2001, as a result there is no question of the Du Parc property being subject of attachment. I am therefore

of the view that the applicant has not made out a case of mortgage by deposit of title deeds. The applicant cannot therefore claim under a decree of foreclosure in its favour nor can the Custodian claim that the Du Parc property stood attached upon notification of respondent no.1.

21. The sale of properties as above have occasioned pursuant to attachment of the properties by the Custodian and in this respect it is also necessary to point out that the applicant's claim today is based on a decree that it obtained in Special Court Suit no. 8 of 2002 on 4th April, 2008. In paragraph 4 of the judgment decree the court observed that the mortgage is admitted position but although the plaintiff had claimed foreclosure, no decree for foreclosure could be passed. because the property mortgaged already attached and in that respect it was not felt appropriate to grant any order for sale by foreclosure. However, the court observed that it was open to the applicant to claim priorities in payment at the time of distribution. Mr. Sancheti has canvassed the applicant's case on the basis that the court has found there is a valid mortgage, but that in my view are observations based on the pleadings and after the attachment is said to have taken effect.

22. In my view the application will today remain relevant only to the extent of the property situated at Green Field and pay of the sale proceeds of

the property of Eskaydee Leasing & Investment Pvt. Ltd. Prayer clause (a) and (b) of the Miscellaneous Application seeks sale of 15% share of one Eskaydee Leasing & Investment Pvt. Ltd. In the course of submissions Mr. Raikar has clearly stated as far as prayer clauses (a) and (b) are concerned, it is case of the Custodian that 15% share holding of respondent no. 1 in the company continues to be held in terms of shares but these are not dematerialised. Hence there is no occasion to disclose the sale proceeds of 15% shares. It is however an admitted position that certain property owned by Eskaydee Leasing & Investment Pvt. Ltd. was sold and an amount of Rs. 60 lakhs is said to have been recovered and credited in the attached account of respondent no. 1 and that has been invested by the Custodian. Mr. Sancheti has therefore contended that the amount so recovered must be paid over to the applicants because the claim for the sale of 15% shares held is based on the applicant's contention that the commercial premises in question admeasuring 1200 sq. ft at 5th Floor, Mittal Tower, 'C' Wing was mortgaged to it. Exhibit 2 to the Notice of Motion no.1517 of 1996 reveals that the title deeds deposited in relation to this premises is a copy of the agreement dated 30th September, 1996 between M/s.Venus Diamonds and the said Eskaydee Leasing & Investment Pvt. Ltd. This property was since attached and has been sold as aforesaid and it is the sale proceeds of about Rs. 60 lakhs which lies invested as aforesaid. On an analysis of the facts as above all that the applicant can

expect is to claim priority and the request for payment of monies in prayer clause (c) and (d) can be considered at the appropriate stage on a report by the Custodian. Prayer clause (b) of the report cannot be granted.

23. In my view it is not possible to grant any relief sought in the Miscellaneous Application because out of the said eight properties, four were sold. The Du Parc property at Bangalore and the commercial property at Gundecha Chambers were not owned by respondent no. 1 and are therefore beyond the scope of attachment. In respect of the Green Field property the Custodian proposes to attempt transfer of tenancy. Preliminary steps in this regard are being taken. As far as the shares in Eskaydee Leasing & Investment Pvt. Ltd. are concerned the property having been sold, the right of the applicant, if any, to seek payment of the aforesaid amount of sale proceeds of payment of Rs. 60 lakhs or such part thereof as Custodian seems to suggest is kept open to be considered in a report which the Custodian may file. In view thereof I pass the following order :

- (i) Custodian's Report is allowed only in terms of prayer clause (a). Prayer (b) is rejected. Custodian is granted liberty to file further report in relation to property at Green Field and sale proceeds of premises of Eskaydee Leasing & Investment Pvt. Ltd..

(ii) In view of the order on the Report, Miscellaneous Application no. 37 of 2019 is infructuous and is accordingly disposed in the above terms.

(A.K. MENON, J.)