

The truth about fraudulent transfers

Anyone defaulting on a loan can't sell his property to another party if it has been attached for auction to raise money for the creditor

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Sunil Tyagi
htestates@hindustantimes.com

What happens when one lends money to someone and does not get it back? The lender or creditor can approach the court to seek a decree against the person who takes the money (debtor). If the charges are proved, then the court can order attachment of the debtor's property to ensure that proceeds from its auction can be used to repay the creditor. However, there have been cases when the debtor has transferred his property to another person to save his or her property from attachment and to defeat or delay payment to creditors. Such an act is considered to be a fraudulent transfer. Section 53 of Transfer of Property Act contains provisions for protecting the right of a creditor, where a debtor transfers his or her immovable property for defeating the right

of the creditor. Let us take the help of an illustration to learn more about fraudulent transfers. Suppose A takes a loan from B and fails to repay it. B files a suit against A for recovery of his money. The court passes a decree against A. However, prior to execution of decree and attachment of A's immovable property, A transfers it (property) to C. This is a case of fraudulent transfer and can be set aside by the court.

A similar case came up for hearing at the Allahabad High Court. Related to Sundari Versus Bhola Nath, the case involved a debtor, Bachai, who had taken a loan from Raja Ram and had failed to repay it. When Raja Ram filed a suit against Bachai, the court, after hearing the arguments accordingly passed a decree in favour of Raja Ram for recovery of the money, after which Bachai's property was auctioned and purchased by a third party, Sukku. However, before the auction, the debtor executed a sale deed of the property in favour of one Ganga.

Ganga approached the trial court asking that he be declared the bona fide purchaser. He claimed he had better rights



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over the property than the third party which had acquired the property through auction.

The Trial Court held that Ganga had ownership rights on the property based on the sale deed executed by Bachai.

Aggrieved by the judgment, the creditor and the third party approached the appellate court. After taking into account all the facts and circumstances, the appellate court observed that Ganga had an implied notice of the fact that Bachai was selling his property to avoid the pay-

ment to Raja Ram. He (Ganga) had also not given any consideration to Bachai towards the property. Thus, the appellate court held that Ganga had not purchased the property in good faith nor had he paid any consideration towards the property. The transfer of the property by the debtor to the purchaser was only with the intention to avoid the repayment to the creditor, it said.

Not happy with the appellate court's judgment, Ganga approached the second appel-

late court. However, the judgement of the first appellate court was upheld by this court. It also observed that the sale deed executed by Raja Ram in favour of Ganga was only a sham transaction, and was not executed in good faith. It was just done to defeat the creditor.

However, it must be noted that this section does not affect transfer of immovable property by the debtor to a bona fide purchaser, who has purchased the property from the debtor in good faith and has paid consideration

amount towards the same. Such a transfer will be considered valid and cannot be avoided at the instance of the creditor. In our next article, we will discuss transfers which fall under the category of bona fide purchase.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com.



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SUNIL TYAGI

I am a resident of Delhi but I am presently staying in Pune. I have a self-acquired property in Delhi which I had leased out to a tenant. He has informed me that a new electric meter needs to be installed in the property as the old one is giving a faulty reading. It is not possible for me to take leave from work. Is it safe to give a power of attorney to the tenant for doing the needful?

- Tanvi Gupta

You may execute a special power of attorney in favour of your tenant to provide him authority for acting in your behalf for the specific purpose of replacement of the old faulty electric meter and the installation of a new electric meter in your premises in your name.

The tenant of my property is overstaying, despite the fact that the lease term had expired some weeks ago. I have sent several notices asking him to vacate the flat but to no avail. Should I forcefully evict him?

- Ramesh Chander

Despite the fact that your tenant has not vacated the property even after expiry of the lease term and the notice period, you cannot forcefully evict the tenant. Nevertheless, you are entitled to seek eviction of the tenant by filing an eviction suit, if the tenancy is not covered under Delhi Rent Control Act, 1958, in the competent civil court.

I had entered into an agreement to sell to purchase a flat last year. As per the terms of the agreement to sell, it was agreed that the sale deed would be executed within one year from the date of the agreement to sell. It has been

more than a year and the owner has been delaying the execution of the sale deed on one ground or the other. Can I file a suit for specific performance even though our agreement is silent on this aspect?

- Shivang Mehta

Even though the agreement to sell in your favour does not contain an explicit clause on your right to sue for specific performance, you are nevertheless entitled under the law to seek the relief of specific performance and to get the sale deed executed in your favour.

I had taken a loan by mortgaging my house to the lender in October 2014. As per the terms of the mortgage deed the possession of the house was transferred to the lender till the repayment of the loan amount. Now I have repaid the entire loan amount to the lender but the lender has not yet returned the possession of my property to me. It has been almost two years. Am I still entitled to file a suit for the possession of the property?

- Sudhir Chopra

As per the Limitation Act, 1963, you are entitled to file a suit for redemption that is primarily for recovery of possession within three years from the date you have repaid the loan amount to the lender.

The author is a senior partner, ZEUS Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com

