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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 30th January, 2015

+ **W.P.(C) 862/2015**

STANDARD CHARTERED BANK Petitioner
Through **Mr. Sumit Bansal, Mr. Ateev Mathur**
and Mrs. Richa Oberoi, Adv.

versus

VISHAL GLOBAL LTD. & ORS. Respondents
Through **Mr. Pallav Saxena and Mr. Abhishek**
Kumar, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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Caveat No.96/2015

Counsel for the caveator has entered appearance.

Caveat stands discharged.

W.P.(C) 862/2015

1. The petitioner is aggrieved by order of the Recovery Officer in Debts Recovery Tribunal-I, New Delhi in recovery proceedings 263/2002. It is stated that the petitioner was holder of the recovery certificate, issued pursuant to final order in its original application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

During the pendency of recovery proceedings, petitioner initiated proceedings under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”). In the meantime, WP 6877/2009, which was filed challenging the assignment deed by State Bank of India assigning the recovery certificate in favour of the petitioner-bank was permitted to be withdrawn on 27.8.2010. It is stated that the petitioner filed another writ petition 7707/2010 for identical relief which was permitted to be withdrawn, yet again, on 19.11.2011. In a third round, another application for restoring of writ petition 6877/2009 was sought. In this round, another attempt to stall the proceedings under SARFAESI Act by seeking interim orders was made, which was initially accepted by the Court. The interim stay was subsequently vacated on 03.08.2011 and on 09.08.2011, the Court dismissed the proceedings seeking restoration of the application. The petitioner pointedly refers to the order of 09.08.2011, particularly para 17 and 18 which are in the following terms :

“17. Having found the petitioner to have indulged in suppression of facts, she cannot be held to be entitled to the relief of pursuing this petition, even if her application for revival of this writ petition otherwise had any merits. For the same reasons, I also do not find any merit in the application of the petitioner for restoration of the order dated 27th May, 2011.

18. As far as the punishment to be meted out to the petitioner is concerned, I tend to accept the contention of the senior counsel for the petitioner of the facts having remained to be informed to this Court owing to a bona fide mistake. Considering the said fact and further considering that the counsel advising the

petitioner is a young professional, I tend to put the matter to quietus by imposing punishment on the petitioner of payment of ₹1 lac to be deposited with Delhi High Court Legal Services Authority. The same be done within four weeks. If the proof of payment is not deposited with the Registry within four weeks, the matter to be relisted for appropriate directions.”

2. It is submitted that the order dated 09.08.2011 of the Single Judge was unsuccessfully challenged before the Division Bench, which rejected the appeal in LPA 827/2011 on 06.02.2012, directing deposit of costs of the sum of ₹1 lakh.
3. In the meanwhile an appeal SA 45/2011 was preferred before the DRT, under Section 17 of SARFAESI Act in which interim order was declined on 07.05.2011. It is submitted that having repeatedly sought the invalidation and stalling of proceedings under the SARFAESI Act and having been unsuccessful in view of the law by Supreme Court in *M/s Transcore Vs Union of India & Anr* (2008) 1 SCC 125, the respondent/borrower could not have sought collateral relief before the Recovery Officer yet again urging the same contentions with respect to the maintainability of SARFAESI proceedings.
4. By the order dated 04.12.2014, the recovery officer appears to have examined and pronounced the validity of the SARFAESI proceedings.
5. Counsel for the respondent, who appears on advance notice, urges that the Recovery Officer acted correctly, and after due appreciation of law, and urges that the petitioner ought not to be allowed to approach this Court without exhausting the appellate remedy.
6. It was urged during the proceedings that the respondent has grossly abused the process of the Court. This Court is of the opinion that whilst

there could be some truth in this submission - considering that the respondent approached the Court repeatedly and on each occasion was unsuccessful, and also, having lost before the Division Bench the appropriate remedy for the petitioner would be to exhaust its appellate remedies under Section 30 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993. Having regard to the circumstances, if the petitioner approaches the DRT within two weeks, its appeal shall be considered and decided on the merits within four weeks thereafter. The DRT is directed to take all expeditious steps to ensure service upon the respondent so that the directions of this Court are complied with in letter and spirit.

7. The counsel for the petitioner seeks liberty to withdraw the petition. The writ petition is dismissed as withdrawn in the above terms.

8. The respondent who is represented on advance notice shall also be served through its counsel who has appeared all through.

9. Stay application is also disposed of.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 30, 2015

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