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

Decided on 8th April, 2015

+ W.P.(C) 1432/2015

M/S SAI PRECIOUS GEMS & JEWEL Petitioner
Through: Ms.Pratiti Rungta, Mr.Sumit Pargal
and Ms.Heena Dua, Advs.

+ W.P.(C) 2256/2015

PRATITI RUNGTA Petitioner
Through: Mr.S.K.Rungta Sr. Adv. with
Mr.Prashant Singh and Ms.Heena
Dua, Advs.

versus

PUNJAB NATIONAL BANK & ORS Respondents
Through: Mr. Karan Khanna and Ms Asmita
Kumar, Adv. for R-1.
Mr.Sanjeev Bhansdari, Mr.Dhananjay
Kumar Singh and Mr. Deepak
Mishra, Advs. for R-2 and R-3.

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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1. It is stated that Local Commissioner has complied with the directions and has prepared the inventory. Its reports are, however, not a part of the record.

2. This Court intervened in this matter at the behest of the borrower who

is writ petitioner in this case, on the ground that an ex parte order of seizure and sale of its jewellery was passed on 23.01.2015 by the Debts Recovery Appellate Tribunal (DRAT). After considering the circumstances – including the petitioner’s statement that it had approached the respondent bank with a proposal for One Time Settlement (OTS), this Court on 12.02.2015 had passed an interim order staying the seizure and sale of the property, jewellery and other articles in the petitioner’s property bearing No. A-14, Lower Ground Floor, New Friends Colony, New Delhi.

3. On 09.03.2015, the petitioner was directed to comply with previous order dated 12.02.2015 and ensure that the premises were available for visit by Local Commissioner

4. It was submitted during the course of the proceedings that the petitioner is not disputing the liability i.e. Rs.80,07,539/- as on 17.12.2011 when the notice under Section 13(2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) was issued. However, it is stated that the petitioner disputes the interest liability and this Court may require the DRAT to hear the submissions and findings of the fact to the extent of such liability. (Learned counsel for the bank submitted that till date petitioner has not disputed any amount). This Court has considered the submissions of Mr.N.K.Arora, one of the guarantors of the petitioner who is present; he also is the father of the petitioner’s proprietor. Having regard to the instructions given to the petitioner’s counsel and submissions made by her, this Court is of the opinion that in view of the admission here, following directions are warranted.

(i) On the petitioner depositing a sum of Rs.50 lakhs on or before

30.04.2015, the respondent shall not take any action towards securing possession of the assets or put it on the sale.

- (ii) The petitioner shall deposit the remaining amount after the payment of Rs.50 lakhs out of Rs.80 lakhs on or before 15.05.2015.
- (iii) The DRT is hereby directed to render its findings limited to the question of appropriate rate of interest and penal interest payable by petitioner having regard to the above developments.
- (iv) The petitioner's sole proprietor shall furnish an affidavit/undertaking to comply with the above within a week from today. All rights and contentions of the parties in respect of the controversies before the DRT i.e. interest amount payable by the petitioner are reserved. The bank is directed – subject to the compliance by the petitioner of the above direction of deposit of Rs.80 lakhs – not to take further action awaiting the decision of DRT in O.A.No.144/2011.

5. In the light of the above order, the proceedings before the DRAT have become infructuous. Bank is directed not to initiate any action towards taking possession of the property, moveable or immovable, whether they belong to the petitioner or to the first guarantor, and shall await the final decision of the DRT for this purpose.

6. DRT would also decide the bank's claim if any towards the legal expenses incurred by it. Petitioner is at liberty to contest the same in which separate findings would be recorded in this regard.

7. It is agreed by all the parties that in the light of the above order

nothing presently survives for consideration before the DRAT as between the parties. DRAT directions shall be treated as infructuous and accordingly directed to be disposed of.

8. In the event of default in compliance of the above direction, it is open to the respondent bank to avail of all legal recourse in this Court. It is clarified that in the event of such default the bank shall not take any action towards respondent No. 2 and 3 without first exhausting its action in respect of petitioner's assets i.e. jewellery and other immovable articles.

9. The said affidavit/undertaking of petitioner shall also expressly state that in the event of default, the petitioner would hand over the possession of the jewellery to the bank for realisation of its dues.

10. The writ petition is disposed of in the above terms.

W.P.(C)2256/2015

1. We have heard the submissions of the parties. The petitioner in this proceeding appeared as a counsel in W.P.(C)1432/2015. She is aggrieved by certain observations made by the DRAT with regard to the conduct of the proceedings before it and the counsel's role.

2. The DRAT had decided an application on 11.02.2015 declining the request for deferment/suspension of its previous order by which Commissioners were appointed to visit the borrower's premises, seize jewellery and other movable assets and put them to auction. The borrower – who was represented by the petitioner moved this Court in W.P.(C)1432/2015. On 12.02.2015, this Court suspended the order of the DRAT. The DRAT by its order on 02.03.2015, *inter alia*, observed as follows:

“Instead of making any deposit, the borrower chose to challenge the orders dated 23rd January, 2015 as well as 11th February, 2015 by filing Writ Petition No.1432 of 2015. The order passed by the Hon'ble High Court on this Writ Petition has been placed on record of this file on 16th February, 2015 without moving any proper application. It has repeatedly-been stressed by giving directions to the Registry of this Tribunal not to accept any document unless there is judicial order, permitting the party to place on record any document or proper application is filed for placing on record a particular document. I fail to understand as to how the Registry is disobeying the orders in this regard. These are judicial orders and disobedience thereof may invite action against the responsible official(s), who dare(s) to disobey the same.

Not only this, a very disturbing feature is brought to the notice of this Tribunal by the counsel for the appellant and the Bank that the borrower had applied for certified copy of the order dated 11 February, 2015 on 13th February, 2015. The copy was supplied on 13th February, 2015 to the counsel for the respondent / borrower. In the Writ Petition typed copy of this order was filed as an annexure without disclosing in the Writ Petition as to how the copy was available with the counsel on 12th February, 2015 when mention was made for listing the Writ Petition. It appears that the counsel has adopted some illegal means to obtain copy of this order, may be with the connivance of some officials of the staff of this Tribunal. This situation is unacceptable. This conduct may expose the person concerned for criminal liability as well.

Before issuing any further direction, it is considered appropriate to direct the Registrar of

this Tribunal to hold an enquiry in this regard to find out as to how typed copy was obtained even before supply of certified copy. This could not have been possible unless judicial file was made accessible to the counsel. The Registrar will submit his report before the adjourned date. The Registrar would be at liberty to record the statement of the advocates concerned to arrive at proper and appropriate findings. Further direction in this regard would follow once this fact finding report is submitted.”

3. The petitioner who appeared as counsel is aggrieved not by the institution of an inquiry but the observations which according to her reflects perversity on her conduct.

4. Learned senior counsel appearing on her behalf submits that these observations prejudicially amount to pre-decision on the issue and irreparably result into adverse effect on her career. On the first date of hearing, this Court had directed stay of further proceedings in the fact finding enquiry and at the same time required the DRAT to transmit the record of the proceedings in Appeal No. 398/2013 pending before it. Besides, this court has considered the material available. The petitioner urges that the order in W.P.(C)1432/2015 was dictated in open Court and on that day its steno was available and present in Court who noted the proceedings. To support this contention the petitioner has placed on record the extract of the steno's notes. It is submitted that a comparison between the order as filed along with W.P.(C) 1432/2015 on 12.02.2015, with the certified copy made available by the DRAT subsequently on 13.02.2015 in fact support the petitioner's contention.

5. This Court has considered the comparison between the steno's notes, which are a part of the record in the present petition and based on which the copy of the order dated 11.02.2015 was filed along with W.P.(C) 1432/2015, and the certified copy made available to this Court now in the present case. The comparison itself would show that there is no significant difference. Copy of the order dated 11.02.2015 filed in the first instance was enclosed as Annexure A. The petitioner had in fact sought exemption from filing certified copy by stating that the certified copy of the order was not available at that time. Taking into account the totality of the circumstances, this Court is of the opinion that the arguments of the petitioner are creditable and plausible. At the same time, the Court is of the view that the apprehensions which made the Chairperson of the DRAT in adopting the course that he did in instituting an inquiry cannot be altogether deprecated. While doing so, possibly the anguish felt by him was expressed rather sharply. This Court is, however, not inclined to take the matter further and would instead request the DRAT to close this matter completely given these circumstances. Consequently, such observations shall stand expunged, as far as petitioner is concerned.

6. It is clarified that it is open to the Chairperson of the DRAT to take such action as may be necessary. This order shall not, however, in any manner be construed by the Chairperson of the DRAT as impediment to its power to take such action as may be necessary in other cases where it is essential to do so.

7. This Court is also of the opinion that DRAT need not have adversely commented on practice of placing on record the copy of this Court's order in the manner adopted in the present case. It appears that the procedure in

DRT and the DRAT required the concerned party to move an application. This Court is of the opinion that a certified copy or a copy of the order of this Court or a superior Court can be duly filed with an index duly signed by the representative or the counsel of the concerned party.

8. W.P.(C)2256/2015 stands disposed of in the above terms.

9. Dasti.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 08, 2015

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