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

% **DECIDED ON: 05.05.2015**

\+ W.P. (C) 2906/2015
C.M. No.5208/2015

SUMITRA GUPTA ..... Petitioner

Through: Mr. Vivek Tankha, Sr. Advocate and Mr. Amit Chadha, Sr. Advocate with Mr. Alok Krishna Agarwal, Mr. Naveen Chawla and Mr. Mayank Bughani, Advocates.

versus

PUNJAB NATIONAL BANK & ORS ..... Respondents

Through: Mr. Hashmat Nabi with Mr. Vipin Pillai, Advocates.

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

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The writ petitioner is aggrieved by an order of the Debt Recovery Appellate Tribunal (DRAT) dated 01.01.2015 in Appeal Nos.305/2013 and 317/2014 whereby an appeal against the order of the Debt Recovery Tribunal (DRT) in OA 166/2008 was rejected. The respondent Bank had instituted proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act

(OA 166/2008) for recovery of over ₹20,91,92,307/- with interest and costs. The principal borrower was M/s Hotline Teletube Components Ltd; the other parties, included M/s Fusebase Eltoro Pvt. Ltd., Shri Anuj Gupta, S/o Late Anil Gupta and the present petitioner. The petitioner's complaint was that the suit property was owned absolutely by her, and not as the testate/intestate successor of late Anil Gupta, her husband.

2. The facts relevant so far as the present proceedings are concerned are that one of the guarantors of the principal borrower late Anil Gupta had acquired through testamentary successesion the suit property being No.5/17, Shanti Niketan, New Delhi on 2.10.1990 upon the death of its owner, his brother Mukesh Aggarwal. The latter had bequeathed the property by his Will dated 18.08.1990. Anil Gupta secured probate of the Will on 12.02.1992; and the property was eventually mutated in his favour on 04.06.1999. Apparently, in late 2005, Anil Gupta was diagnosed with cancer. Whilst so, during his lifetime on 11.07.2006, he executed the registered Gift Deed in favour of petitioner, his wife, divesting himself of the right, title and interest to the suit property, in her favour on 03.08.2006. During the lifetime of Anil Gupta, measures under Section 13 (4) of the SARFAESI Act were taken by the respondent bank on 13.02.2007. There the bank had proceeded against the plant and machinery of the principal borrower and mortgaged assets - with which the present proceedings are not concerned. On 14.02.2008 Anil Gupta died. The bank thereafter instituted legal proceedings by way of OA 166/2008 on 27.11.2008. The present petitioner was impleaded as third

respondent.

3. The proceedings before the DRT would indicate that though served with the notice, the petitioner did not enter defence substantively. However, she resisted the order attaching the suit property contending that it could not be the subject matter of the proceedings since it was not part of the estate of the deceased Anil Gupta who stood as guarantor to the loan transaction of M/s Hotline Teletube Components Ltd. The DRT proceeded to adjudicate the merit of the dispute and decreed the application *inter alia* directing as follows: **-**

> *"iii. The liability of the Defendant No.3 and 4 be limited to the extent of the property(ies) inherited by them from deceased Anil Gupta.*
>
> *iv. The Applicant Bank shall be entitled to recover the amount by proceeding against the immovable properties bearing No. 5/17, Shanti Niketan, New Delhi and Farm House bearing No.20, Avenue Maulsari, Rajokri, New Delhi on which restrained order was passed on 21.7.2010."*

4. The petitioner appealed to the DRAT. In the appeal, for the first time, she contended that the properties had to stand out of the proceedings since she had exclusive title to it and that the assets did not devolve through intestate succession. In other words, she asserted that being the donee in the gift deed she acquired the property during the life time of Anil Gupta and had clear title which could not be proceeded against in the Original Application. These pleas were specifically urged in paragraph 12 of the appeal preferred to the

DRAT as well as grounds A-B. The DRAT, however, by the impugned order declined to examine this. It held that since the petitioner did not file any written statement and enter defence substantively, the DRT's determination was in order and that the final order did not require any correction or interference.

5. Learned senior counsel for the petitioner urges that facially the facts brought on the record in the appeal warranted examination on the merits of the disputes regardless of whether the petitioner had entered her substantive defence. Contending that the gift deed by which Late Anil Gupta divested himself of the title and made it over absolutely to the petitioner on 11.07.2006 was a complete defence to the bank's attempt to proceed against it, learned counsel contended that only such of the assets in which interest devolved on her or has been bequeathed through testamentary succession upon the petitioner (in her capacity as legal heir) could lawfully have been proceeded against. He relied upon the rulings of the Supreme Court in *Govt. of Orissa v. M/s Ashok Transport Agency,* 2002 (9) SCC 28 and *C.N. Ramappa Gowda v. C.C. Chandregowda,* (2012) 5 SCC 265.

6**.** Mr. Hashmat Nabi, learned counsel for the bank argued that having committed default in not filing written statement before the DRT, the petitioner could not have sought an examination of the merits of the case. It was submitted that the plea urged by the petitioner cannot be gone into and that the facts clearly reveal that Anil Gupta has resorted to fraudulent transfer to defeat the rights of his creditors. Reliance was placed upon Section 53 of the Transfer of Property Act, 1882 for this purpose. It was submitted that in any event since recovery proceedings are pending before the DRAT on the petitioner's objections with regard to the question of attachment of property in view of Section 60 (1) (ccc) of the Code of Civil Procedure, 1908, the appropriate forum to decide this issue would be the Recovery Officer.

7. There is no doubt that the petitioner was at fault in not entering the defence and urging categorically that she had clear title to the suit property and that the same could not be made the subject matter of the proceedings. At the same time, this Court is also of the opinion that the primary onus of proving its case that the suit property was the subject matter of the original proceedings and the proceedings emanating from it lay on the bank before the DRT. In other words, the default by one party would not absolve the applicant who stood in the shoes of the plaintiff to prove its case positively. In any event, having been alerted about the plea urged by the petitioner that she acquired exclusive and absolute title to the property before the death of the guarantor Anil Gupta, the most appropriate course for DRAT would have been to remit the matter to the DRT for its consideration. That would have enabled the DRT to examine - to the extent possible - the bank's plea or objection and a conclusion might have been reached as to the genuineness as well as the legality of the gift deed.

8. In the circumstances, the impugned orders to the extent that they rule upon the petitioner's liability are hereby set aside. In other words, Direction no.4 of the DRT quoted above which is specific in respect of the suit property is hereby set aside. It is, however, clarified that the final order and the subsequent orders of the DRAT and the

other parts of the liabilities of the principal borrower and other judgment debtors are, however, undisturbed. The petitioner shall be afforded an opportunity to place the Gift Deed upon which she relies, on the record and also file her written statement within four weeks of the matter first appearing before the DRT. The parties are directed to appear before the DRT on 14.05.2015. All rights and contentions of the parties are kept open.

9. The Writ Petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 05, 2015
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