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

Decided on: 06.01.2015

\+ **W.P.(C) 3899/2014**

SADHNA DEVI

..... Petitioner

Through Mr.Nasimuddin, Adv.

versus

UNITED BANK OF INDIA & ORS

..... Respondents

Through Mr.Irfan Ahmed and Mr.Ishaan Aggarwal, Advs. 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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1. The petitioner challenges the order of the Debt Recovery Appellate Tribunal dated 07.05.2014 in Appeal No.448/2012. The petitioner's appeal under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as "SARFAESI Act") was dismissed by the impugned order. The brief facts are that the petitioner claims to have purchased property bearing No. 3/157, measuring 105 sq.yds out of khasra No.642 of Village Chandrawali, Shahdara, abadi of Lal Dora, situated at Gali Ganga Ram, Teliwara, Shahdara (hereinafter called "the suit property") from her husband Shri Anil

Kumar on 14.03.2005. The said Anil Kumar has been impleaded as the fifth respondent. In these proceedings the petitioner claims that the appeal was the result of the settlement arrived at through intervention of the relatives and family members, by which *inter se* dispute of the petitioner and the fifth respondent was resolved. The controversy in this case turns around the order made by the Additional Chief Metropolitan Magistrate (ACMM) on 31.08.2009 under Section 14(2) of the SARFAESI Act on the application of the first respondent (hereinafter called "the bank"). The bank had prior to that order issued a notice under Section 13(2) of the Act, claiming, *inter alia*, that the suit property had been mortgaged with it to secure a loan obtained by the second respondent in these proceedings i.e. Smt. Anila Sharma. The notice issued by the ACMM was challenged before the Debt Recovery Tribunal (hereinafter referred to as "DRT") under Section 17 of the SARFAESI Act. The DRT vide its order dated 6.11.2012 rejected the appeal. Consequently, the petitioner approached the DRT but unsuccessfully since the impugned order rejected her pleas.

2. During the pendency of these proceedings, this court had noticed that the document relied upon by the petitioner i.e. the copy of the sale deed dated 14.03.2005, by which the fifth respondent conveyed title to the petitioner, was not an authorized one. It accordingly had directed the de-sealing of the premises, which were lying locked pursuant to the order of ACMM. After the de-sealing was done, the petitioner inspected the premises. She alleged that the original registered sale deed dated 14.03.2005 was missing from the premises. Consequently, she apparently applied for the certified copy and obtained on 12.12.2004. The same has been produced. The photocopy thereof has been directed to be kept on

record.

3. The DRT in its impugned order reasoned as follows for rejecting petitioner's appeal:

> *"I have considered the submissions made by the counsel and perused the document on record. The property in question is situated in East Arjun Nagar, Shahdara, Delhi. The sale consideration of the property as shown by the appellant is too artificial. This is even belied by her own pleadings that she had mortgaged part of this property for a sum of ₹2.65 lacs in the year 2008. If really the sale deed in favour of the appellant was genuine, her husband could not have entered into the adventure of selling it in the year 2008. The finding returned by the Tribunal below is based on the evidence and material placed on record. I do not find any infirmity in the appreciation of this evidence as done by the Tribunal below. The finding returned by the Tribunal below is well-reasoned and well-supported by evidence on record and, therefore, would not call for any interference."*

4. This court has considered the submissions. The transaction through which the fifth respondent i.e. the petitioner's husband apparently mortgaged the suit property was pursuant to another sale deed of 28.08.2006. The transaction through which second respondent became the purchaser of the property is a registered sale deed dated 28.08.2006. The bank in this case lent money, subsequently based upon the deposit of that title deed and the entire chain. Obviously, the title deeds pertaining to petitioner were not available to it. That the petitioner came forward with the document registered sale deed dated 14.03.2005 *ipso facto*. Whilst the Tribunal's finding might be justified if it were based upon evidence or materials placed on record or otherwise gathering of the correct valuation of the property, the discussion of the DRT does not disclose the basis for

holding that the sale deed of 14.03.2005 was a sham document. In these circumstances, the matter is remitted for re-consideration by the DRT, which shall take into account the certified true copy of the registered sale deed, produced by the petitioner in these proceedings as well as take into account all other relevant factors in deciding whether or not the transaction was shrouded in suspicion as it has been held in this case.

5. All rights and contentions of the parties are kept intact. The petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 06, 2015
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