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

Decided on 16th January, 2015

\+ **W.P.(C) 4570/2014**

GURDEEP SINGH ..... Petitioner
Through: Mr.Raman Duggal and Mr. Sudhir Kumar, Advs.

versus

PUNJAB & SINDH BANK & ORS ..... Respondents
Through: Mr. Pallav Saxena, Adv. for R-1.
Mr. Abhishek Kumar, Adv.

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. With consent to the parties, matter was heard for disposal. The petitioner claims to be aggrieved by an order of Debt Recovery Appellate Tribunal (DRAT) dated 14.07.2014 in Appeal No. 5/2014 (DEL-II).

2. The respondent (hereinafter referred to as "the Bank") had initiated recovery proceedings under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and filed an application before the Debt Recovery Tribunal (DRT). The bank contended that the petitioner had deposited a sale deed dated 26.05.2003 and created an equitable

mortgage. The Sale deed was executed by Ms. Manjeet Kaur in favour of one Divender Pal Singh. It was also alleged that the mortgager had deposited the copy of the Sale deed dated 30.10.1958 in favour of Mr. Hari Singh, agreement to Sell, General Power of Attorney, Special Power of Attorney, Receipt and Will all dated 10.4.1990 executed by Mr. Hari Singh in favour of Mrs. Manjeet Kaur. According to the bank, the borrower was M/s. R.P.S. Oil Company, and the mortgage was created to secure the loan transaction in which it was involved. The present petitioner was not a party to those proceedings. The DRT by its final order dated 23.04.2012 decreed the Bank's claim, in sum of ₹35,62,112/- the respondent/borrower, became the judgment debtor.

3. The bank, during the recovery proceedings obtained possession of the property was, in the meanwhile obtained under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereafter "SARFAESI"). The petitioner became aware of the alleged fraudulent transaction at that stage and consequently filed a suit (Suit No. 427/2006) for recovery of possession. He claimed to have been completely in the dark and therefore filed the suit. It was contended that the Sale deed which the bank relied on and alleged to have been executed and forming the subject matter of the equitable mortgage, was a fraudulent document and, therefore, a nullity. As noticed earlier, the petitioner was not the party to the proceedings under the DRT. The petitioner also moved the District Judge, in the pending suit (CS(OS) 427/06), with an application for stay of the recovery proceedings. The District Judge by an order dated 22.12.2006 directed maintenance of *status quo* but declined grant of any stay of proceedings pending before the DRT. The DRT by its final order dated

23.04.2012 allowed the original application of the bank and decreed its claim. Consequently, the Recovery Officer (R.O) proceeded, pursuant to application of the bank, to take steps for recovery of the decreed amount. The RO was not subject to any restraint order. He therefore, issued an order, rejecting the petitioner's objections. That order became the subject matter of further Appeal bearing No.5/2014 to DRT. Eventually, the petitioner moved the DRAT against the order of DRT. In an application restraint of the proceedings before the RO was sought to be obtained. The impugned order of DRAT declined the application.

4. It is contended that in this case the petitioner has consistently been approaching the concerned authorities at all appropriate stages. Learned counsel firstly contended that the petitioner's genuineness as to his complaint about the transaction (relied upon by the bank) being fraudulent to fasten liability upon him is borne by the fact that the moment he became aware of SARFAESI proceedings and was aggrieved he approached the Civil Court which after considering the question of maintainability proceeded to entertain the suit and even issued a *status quo* order. Learned counsel highlighted that as on date issues were framed and the parties-including the respondent bank, have to proceed to trial. Learned counsel submitted that in these circumstances, the DRT and later the DRAT acted rather mechanically declining to stay recovery proceedings. It was argued that the bank's interests are amply protected because if the mortgage is ultimately found to be genuine and not a fraud, the bank would have the benefit of it, towards realizing the dues.

5. Learned counsel for the bank urged that the question of fraud and the other allegations were not brought to the notice of the DRT or even to

DRAT in the proceedings at the appropriate stage. It was submitted that certain new facts are sought to be agitated in the Court proceedings. It was also argued that without doubt, the bank's borrower has virtually abandoned the proceedings and it would be difficult to go after the borrower in case the amounts are not realized from the petitioner and the mortgaged property.

6. This Court notices that in the impugned order itself the DRAT was made aware about the pendency of Civil suit (427/06) where a direction to maintain *status quo* in respect of the suit property was ordered at the initial stage. However, District Judge was constrained and did not issue any order staying the DRT or recovery proceedings perhaps correctly so having regard to the fact that the DRT and the RO. under the SARFAESI, are independent statutory authorities against whom, in the absence of an independent substantive action, no direction could have been made. Nevertheless, the fact remains that in the circumstances of this case, the petitioner has all along been claiming to be a victim of fraud. In *Mardia Chemical Ltd. vs. Union of India* (2004) 4 SCC 311 the Supreme Court held that despite the bar contained in the SARFAESI, in exceptional instances wherever fraud is alleged a suit is appropriately maintainable because that would be the only forum to agitate the genuineness of a document or a and legality of a contract forming the basis of the liability. The Court held that:

> *"to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or their claim may be so absurd and untenable which may not require any probe, whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages."*

This decision was applied even in later rulings, such as *Nahar Industrial Enterprises Ltd v. Hongkong Shanghai Banking Corpn* (2009) 8 SCC 646.

7. In the present case the suit (CS (OS) 427/06) filed by the Petitioner, (renumbered as Suit No.106/2012) initially decided the threshold issue of maintainability. The court held in favour of the petitioner and proceeded to entertain the suit. Further proceedings before the DRT and DRAT, however continued. In these circumstances, the recovery proceedings could not be interdicted. It is also a matter of record that the suit has reached an advanced stage of the proceedings; issues have been framed and the parties have to lead evidence. If at this stage, the Bank is allowed to proceed against the property and ultimately the petitioner's pleas succeed, he would have been prejudiced irrevocably. As against this, the bank is in possession of the suit property and is also the decree holder to the tune of ₹ 35,62,112/-. If the mortgage transaction is held to be genuine, it would be free to proceed against it. The proceedings under Article 226 of the Constitution of India are discretionary and meant to reach out wherever the justice of the case demands a particular direction. The courts have discretion to issue such orders *ex debito justitiae.* The Supreme Court (though in a different context) in *Sangram Singh v. Election Tribunal, Kotah* AIR 1955 SC 425 -while considering the provisions of the Code dealing with the trial of suits- that:

> *"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done*

to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

Therefore, on a balance of the equities, we are of the opinion that the recovery proceedings should not go on till the suit is decided finally one way or the other.

8. Considering the overall conspectus of facts and circumstances, we hereby direct the concerned Additional District Judge (Sh. Ramesh Kumar who last heard it on 08-12-2014, or the concerned successor Judge) to decide Civil Suit (427/06 renumbered as No.106/2012) to finally decide the suit within six months, and render final judgment after recording the evidence of the parties. In any event, the final judgment shall be delivered on or before the 15.09.2015. The respondent/Bank is hereby restrained from proceeding further the recovery of the amounts stated, due claimed against the petitioner till final judgment is delivered. It is however at liberty to do so in the light of the final judgment of the DRT against the original borrower.

Its action to proceed against the subject property shall be determined having regard to the outcome of the suit. The Registrar General shall forward a Dasti copy of this order for due compliance to the concerned Judge hearing and trying CS 427/06(re-numbered Suit No. 106/2012, last heard by Mr. Ramesh Kumar, ADJ).

9. The writ petition is allowed in the above terms. There shall be no order as to costs.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

JANUARY 16, 2015
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