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

Decided on 20th February, 2015

+ W.P.(C) 6441/2014 & C.M.No.15452/2014

SURESH KUMAR

..... Petitioner

Through: Mr.Amit Bajaj, Adv.

versus

JAIN CO-OPERATIVE BANK LTD. & ORS Respondents

Through: Mr.Gautam Singhal, Adv. for R-1.

Mr. Anwar, Adv. 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. We have heard learned counsel for the parties.
2. The present petition is directed against the order dated 13.05.2014 of the Debts Recovery Appellate Tribunal (DRAT) whereby it dismissed the present petitioner's appeal. The petitioner consequently seeks a direction to the DRT-III to decide on the S.A. No.538/2012 filed by the petitioner without insisting on the pre-deposit of ₹ 3 lakhs.
3. The brief facts are that the petitioner claims to be the registered Power of Attorney holder of the property over which a mortgage security was apparently executed in favour of the first respondent/bank. The petitioner's submission is that as the prior beneficial owner of the property, his title had

to prevail over the mortgaged security. The first respondent, on the other hand, contended that the property could not have been parted without the permission of DSIDC since it was leased and that the mortgaged security was created after duly notifying with the concurrence of the DSIDC. The Respondent Nos. 2 and 3 – in whose favour – credit facility was granted by the first respondent challenged the petitioner's assertion and contended that no interest was created in favour of the writ petitioner.

4. The petitioner's appeal against the securitization measure adopted by the bank – in the form of S.A. No. 538/2012 was pending when it was directed to deposit ₹ 3 lakhs by the DRT-III. That order dated 25.10.2012 was appealed against before the DRAT (Misc. Appeal No. 413/2012); the DRAT rejected the appeal.

5. It is contended on behalf of the respondent/bank that the petitioner's appeal before the DRT-III itself (S.A. No.538/2012) has been dismissed in default and that he has filed an application for restoration.

6. We are of the opinion that having regard to the circumstances without expressing any opinion as to the correctness of the order directing pre-deposit, DRT-III should finally adjudicate S.A.No.538/2012 on the merits rather than passing any order dismissing it on the ground of non-deposit of amount directed.

7. Learned counsel for the respondent bank is agreeable to this suggestion but at the same time urges that the DRT-III should be directed to dispose of S.A.No.538/2012 at the earliest and preferably within four weeks.

8. In view of the submissions made, the impugned order is hereby set aside. The S.A.No. 538/2012 is directed to be restored to the file of DRT-III which shall then consider the submission of the parties and decide the said

appeal on its merits. The DRT-III shall take the complete proceedings and render its final decision within six weeks from today. All rights and contentions of the parties are expressly reserved. The first respondent/bank is directed not to take coercive action towards dispossessing the petitioner and to take any further steps towards sale of the property for a period of six weeks.

9. The parties are directed to be present before the DRT-III for this purpose on 02.03.2015.

10. The writ petition and the pending applications are disposed of accordingly.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 20, 2015

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