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

Decided on 8th April, 2015

\+ W.P.(C) 7255/2014 & C.M. No. 17010/2014

RAJ PAL SINGH

..... Petitioner

Through Mr. N S Dalal, Mr. Devesh Pratap Singh and Mr. Pankaj Gupta, Advs.

versus

SYNDICATE BANK & ORS

..... Respondents

Through Mr. V Sudeer, Adv. for R-1
Mr. K K Jha Kamal with Mr. Kartan Singh, Advs. for R-2

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 had filed an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) claiming to be the true owner of suit property i.e. khasra No.329 outside the old Lal Dora, village Mukhmil, Delhi. It was alleged by the petitioner/applicant that the respondents, especially the first respondent had falsely claimed said property and described it as khasra No.299, measuring 150 sq.yds. in old Lal Dora of the same village. Syndicate bank which had advanced amounts to the second

respondent, had sought to initiate measures to take possession of the said properties equitably mortgaged with it, i.e. the said khasra No.299. The dispute raised by the petitioner with respect to the identity and title of the property culminated in findings adverse to him. He appealed to the Debt Recovery Appellate Tribunal, which by its order dated 27.08.2014 considered the evidence and rejected its contentions. He is, therefore, before this Court. On 2.12.2014, this Court had recorded the following order to work out an arrangement to secure interest of the parties.

> *"Learned counsel for the petitioner on instructions from the petitioner states that he is ready and willing to comply with the directions issued by the Debts Recovery Tribunal with regard to payment of the dues of the Bank i.e. Rs.6,15,234/- with 10% simple interest on reducing balance from 1st January, 2008 till full payment. He submits that the petitioner should have been given the first chance to make payment as he was in actual possession of the property in question at the time when the respondent bank wanted to take possession.*
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> *He submits that the dispute between the petitioner and respondent No.2/Sh. Laxman Singh can be decided before an appropriate forum having jurisdiction to decide the dispute regarding demarcation.*
>
> *Issue notice to the respondents. Notice is accepted by Mr. Rama Suba Raju, learned counsel appearing on behalf of respondent No. 1/Syndicate Bank.*
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> *Notice will be issued to respondent No. 2 on steps being taken within ten days by all modes. A copy of this order will also be sent to respondent No. 2.*
>
> *The petitioner will deposit the amount as per the statement made by the learned counsel for the petitioner with*

respondent No. 1/Syndicate Bank on or before the next date of hearing. The amount so deposited will initially be kept in an FDR for a period of one year to earn interest. The deposit is subject to orders which may be passed on or after the next date of hearing. We clarify that no extension of time will be given to the petitioner to make the deposit.

Re-list on 10th February, 2015."

2. It is urged that in compliance with the directions the petitioner has deposited the said amount which has been kept in a FDR by the Syndicate Bank for one year from the date of deposit.

3. We have heard counsel for the parties and are of the opinion that having regard to the factual nature of the dispute, which appears to have been decided by the DRAT with the benefit of documentary evidence and local site inspection, it would be appropriate that the petitioner approaches the civil court. We are conscious that adverse findings have been recorded against the petitioner. Nevertheless we notice that he was not a party to the transaction which led to the SARFAESI Act proceedings, but was compelled to approached the DRT under Section 17. In that sense, the question of title too in the circumstances of the case has been gone into by examination of all the relevant records such as title deeds, revenue records, state of possession, especially both possession and identity. Since the outstanding amounts have now been deposited although by the petitioner, this Court is of the opinion that the bank should be allowed to appropriate the sum and discharge the liabilities, which exist on that count. The petitioner and the first respondent have no objection to this course. The petitioner however submits that all contentions and rights available in law should be permitted to him in the proceedings to be hereafter initiated. He

also requests that this Court should make appropriate observations so that the findings of DRAT/DRT do not come in the way of an examination on the merits of the case.

4. In view of the above submissions the following directions are issued:

(1) The amount of ₹6,15,234/- with such accrued interest lying with the Syndicate Bank shall be appropriated by the said bank towards discharge of the loan liabilities in question. The petitioner who is in possession of the FDR shall surrender the sum to the bank within two weeks.

(2) The petitioner is at liberty to approach the civil court for appropriate relief, including the relief of declaration with respect to title and the identity of the property and claim such consequential reliefs as are permissible in law. Given that the petitioner had been agitating with respect his title from 2009, it is open to him to apply under Section 14 of the Limitation Act provided the suit is filed within four weeks from today. In such event, the civil court shall take reasonable view of the matter and appropriately entertain and try the suit on its merits.

(3) The respondents i.e. borrower and the bank shall be impleaded in the said suit. All rights and contentions available to them in the defence of the suit are expressly reserved.

(4) The civil court shall record its independent findings on the merits and the observations of the DRT/DRAT shall not come in the way of the petitioner's arguments. The civil court shall as far as possible try and decide the case expeditiously.

(5) The banks confirms possession of the title deeds and would await the decision of the civil court to take appropriate action in accordance with law having regard to the ultimate decree made in the said civil proceedings.

Order dasti.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

APRIL 08, 2015
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