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

\+ W.P.(C) 6973/2015

% ***Judgment dated 13th August, 2015***

INDERPREET KAUR ..... Petitioner

Through : Mr.Vineet Malhotra, Mr.lajwinder Singh and Mr.Vishal Gohri, Advs. along with husband of the petitioner.

versus

HDFC BANK AND ANR. ..... Respondents

Through : Ms.Gurmeet Bindra, Adv. for HDFC Bank.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (*ORAL*)

1. Present writ petition has been filed by petitioner under Articles 226 and 227 of the Constitution of India seeking an appropriate writ thereby declaring *(i)* the Order dated 26.5.2015 passed by Debts Recovery Appellate Tribunal (hereinafter referred to as "*the DRAT*") and the Order dated 14.5.2015 passed by Debts Recovery Tribunal-I (herein after referred to as "*the DRT"*) as illegal and unlawful, and set aside the same; *(ii)* the action of respondent Bank under Section 13(2) and 13(4) of SARFAESI Act in respect of property bearing no.D-146, First Floor, Sector 8, Dwarka, New Delhi, as illegal and unlawful; *(iii)* the action of respondent Bank to take possession of the aforestated property as illegal and unlawful and restore the possession in favour of the petitioner; and

(iv) declare the sale notice dated 7.4.2015 with respect to the aforesaid property as illegal and unlawful, and set aside the same.

2. In this case, the appeal filed against the Order dated 14.5.2015 passed by the DRT was dismissed by the DRAT on 26.5.2015.

3. The brief facts of the case, according to the petitioner, who is stated to be residing at San Francisco, are that a Gift Deed was executed by her brother-in-law (respondent no.2 herein) with respect to the aforestated property bearing no.D-146, First Floor, Sector 8, Dwarka, New Delhi, in her favour on 3.7.2010, which was duly registered as document no.8635 in Book No.1, Volume No.5430 on pages 134 to 138 on 3.7.2010. At the time of execution of the Gift Deed, the said property was mortgaged with the Citi Bank. It was agreed that respondent no.2 would continue to pay the installments and Citi Bank would hand over No Objection Certificate and title documents once the loan is cleared. The loan was cleared by respondent no.2. The Citi Bank issued No Objection certificate in the month of February, 2013. Thereafter respondent no.2 created a mortgage of the property in favour of respondent no.1 Bank on 9.3.2013 that is after a gap of three years from the date the gift deed was executed in favour of the petitioner. The petitioner learnt about the same on 27.3.2015, when she received a telephone call informing her that the officials of the HDFC Bank had broke open the locks of the house. On 7.4.2015, a sale notice was issued by the HDFC Bank with respect to the property in question. The petitioner thereafter filed an SA before the DRT seeking stay of the action taken by the HDFC Bank under Section 13(4) of the SARFAESI Act. The DRT, vide Order dated 14.5.2015, refused to grant stay of the auction. Aggrieved by the said order dated 14.5.2015, the petitioner filed an appeal before the DRAT, which was dismissed vide Order dated 26.5.2015, which has forced the petitioner to approach this Court.

4. Learned counsel for the petitioner submits that petitioner is neither a borrower nor a guarantor and in fact she is a beneficiary of a registered Gift Deed executed in her favour by respondent no.2/borrower (brother-in-law of the petitioner) on 3.7.2010. Counsel further submits that the mortgage of the property in question was created in favour of the HDFC Bank after a gift deed was executed in favour of the petitioner herein and, thus, the property could not have been mortgaged nor the bank can enforce the mortgage, and accordingly the notice issued under Section 13(4) of the SARFAESI Act for sale of the property is illegal.

5. Learned counsel for the respondent Bank has painted a completely different picture. Counsel for the Bank submits that the petitioner has not approached this Court with clean hands and has suppressed and withheld material facts. It is submitted that the principal borrower had mortgaged the property, subject matter of the Gift Deed, with the Citi Bank at the time of seeking financial assistance. The principal borrower thereafter approached the HDFC Bank to transfer the loan from Citi Bank and transferred the liability of Citi Bank in favour of HDFC Bank along with the mortgage. Citi Bank received the payment from HDFC Bank and transferred the title documents to HDFC Bank. Ms.Bindra accordingly submits that the mortgage was created prior to the Gift Deed.

6. We have heard learned counsel for the parties and considered their rival submissions. While dismissing the appeal, the DRAT observed as under:

> "*Apparently, this gift deed is document prepared with purpose and design to contest the encumbrance over this property. What a move this has been. A person would first go to the Bank, obtained loan by providing security of his property without disclosing a gift deed to his close relation and then make that close relative to contest the charge over the property making allegation of connivance on to the Bank and his/her own close relative. Who would buy this theory? It is very convenient for the borrower to first obtain loan and*

mortgage the property and thereafter create a gift deed in favour of the close relative which is never disclosed to the Bank while obtaining fresh loan to prejudice the rights of the Bank to recover this amount. This obviously is a sham gift deed.

The appellant even has filed this appeal through attorney namely Shri Jaspal Singh. To justify this fact, it is stated that the appellant is presently residing in United States. This attorney apparently has not been embossed to be proper attorney for such attorney to pursue the present lis before this Tribunal. The attorney otherwise is in favour of Shri Manjeet Sigh Mahal who is husband of the appellant and Shri Jaspal Singh son of Shri Kirpal Singh. Whether Shri Jaspal Singh alone is entitled to file this appeal would be another issue. Obviously, the husband has remained in the background as he is the brother of the person, who has gifted this property to the appellant. A brother virtually is accusing his brother of collusion and fraud and that too for bestowing a gift. The appellant can thankfully return the gift with the same love and affection for which the property was gifted. Obvious inference that can be drawn is that it is a made up story which is totally unbelievable and that this document is created only for the purpose of saving the borrower. The Tribunal below has rightly caught the game plan of the appellant which was only to frustrate the recovery of the Bank in this manner. The litigation is a collusive, initiated to help the borrower. No case for grant of interim order, as prayed for by the appellant, is made out. The Tribunal below is rightly justified in dismissing this application for interim relief."

7. We have enquired from counsel for the petitioner that in case, as submitted by him, the loan of Citi Bank stands cleared, whether the original title deeds were returned to the petitioner or not, in terms of the communication dated 2.8.2011 filed by the petitioner at page 118 of the paper book, the answer is in the negative but counsel for the petitioner submits that the Citi Bank had handed over the title documents to the principal borrower and thereafter the said documents were handed over to the HDFC Bank by the principal bower, which is disputed by counsel for the HDFC Bank.

8. Accordingly, in view of the submission of learned counsel for the respondent Bank, we find no infirmity in the Order passed by the DRT and the Order passed by the DRAT. There is no merit in this writ petition and the same is accordingly dismissed.

9. At this stage, learned counsel for the petitioner submits that the value of the mortgaged flat is far in excess of the loan amount, and, thus, the petitioner on behalf of the principal borrower will make an offer to the HDFC Bank and the HDFC Bank should be directed to take a reasonable view in the matter. We are informed that the matter is now listed before the DRT on 24.8.2015. We are also informed that physical possession of the flat has already been taken by the Bank but no date for auction of the same has been fixed.

10. Accordingly, as agreed the DRT would fix a date for auction of the property in question after a period of four weeks from today to enable the petitioner to approach HDFC Bank for a one-time settlement. In case, there is no one-time settlement, it would be open for the petitioner to deposit certain amount before the DRT, which we leave open at this stage. It is made clear that the SA, which is pending before the DRT, will be decided in accordance with law unaffected by any observations made by us in this order.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 13, 2015 msr