

\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8348/2015**

Date of judgment : 09.09.2015

PARTHO BHATTACHARYA

..... Petitioner

Through : Mr. K. K. Bose, Advocate with Mr. P.
Bhattachary, Advocate.

versus

LD. PRESEDING OFFICER, DEBT RECOVERY TRIBUNAL III

..... Respondent

Through : Mr. Prem Grover Advocate for Mr. Anuj
Aggarwal, ASC for GNCTD /Respondent
No. 1

Mr. R. S. Raju, Advocate for respondent No.
2.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S. SISTANI, J. (ORAL)

1. Challenge in the present writ petition is to the order passed by the Debt Recovery Tribunal – III dated 28.07.2015. Notice was issued in the matter. Learned counsel for the respondent bank has entered appearance. With the consent of the parties, the writ petition is taken up for final disposal.

2. On 28.07.2015 the DRT had passed the following order which reads as under:

“This Tribunal is of the view that dues are around Rs.2.30 Crores and applicant has deposited only Rs.12 lacs with the respondent bank and thereafter nothing has been deposited. Hence, the interim order already passed by this Tribunal is hereby

vacated.

As per the latest publication/Gazette Notification dated 11.05.2015 regarding the jurisdiction, the present Securitisation Application does not fall within the jurisdiction of this Tribunal.

Let the petition along with certificate of Court Fee be sent to DRT-II, Delhi.

Matter be listed on 28.08.2015 before DRT-II.”

3. The grievance of the learned counsel for the petitioner is that the Presiding Officer has vacated the interim order which was granted on 02.11.2011. Neither any application for vacation of the order nor any submission was made by the counsel for the bank and without hearing any arguments and recording any reason, the interim order was vacated and despite the fact that the Tribunal has held that Tribunal has no jurisdiction, no further order could have been passed by the Tribunal. Counsel further submits that the conditions imposed while granting stay have been complied with.

4. Heard counsel for the parties. Interim order was granted in favour of the petitioner on 02.11.2011. The operative part reads as under:-

“3. On the other hand the ld counsel for the respondent bank vehemently opposed granting any interim relief to the applicant stating that an amount of Rs.1.37 odd crores is outstanding against the applicant.

4. Having heard the ld counsels for both the parties, the respondent bank is hereby directed not to proceed further under the SARFEASI Act, 2002 in respect of the properties in question subject to making payment of Rs.10 Lacs within 45 days with an affidavit-cum-undertaking, within three days, to this effect that the applicant shall

make the payment as above.

5. *It is made clear that the bank shall be at liberty to proceed further under the SARFEASI Act in accordance with law without seeking further clarification in event of default by the applicant at any of the above stages.”*

5. After the aforesaid order was passed the petitioner claims to have deposited the amounts as detailed in the said order.

6. In our view, without any application on behalf of the bank for modification and without any hearing or giving reason, the interim order could not have been vacated.

7. At this stage, learned counsel for the respondent very fairly submits that the present writ petition may be disposed of and the interim order be restored and leave be granted to the bank to seek modification or vacation of the order as more than Rs.5 Crores are due and petitioner cannot enjoy the interim order merely by depositing Rs.12 Lacs.

8. The present writ petition is disposed of. The respondent is at liberty to make an application to seek vacation / modification which the Tribunal would consider after hearing both the parties. The order dated 28.7.2015 passed by the DRT III as far as it is related to vacation of the interim order is set aside.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 09, 2015/gr