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

\+ W.P.(C) 8408/2015

% ***Judgment dated 8th September, 2015***

RAMESH CHAWLA & ANR ..... Petitioners
Through : Mr.Avneesh Garg, Mr.M.T. Reddy and Mr.Shailendra Ojha, Advs.

versus

IDBI BANK LTD. ..... Respondent
Through : Mr.Rajeev Agarwal, Adv.

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 the petitioners under Articles 226 and 227 of the Constitution of India seeking a direction to set aside/quash the Orders dated 23.6.2015 and 29.7.2015, both passed by the Debts Recovery Appellate Tribunal (hereinafter referred to as the "*Tribunal*"), and the consequential Orders dated 17.3.2015 and 20.5.2015 passed by Debts Recovery Tribunal (hereinafter referred to as the "DRT"). The petitioners also pray that the DRAT be directed to allow the petitioners to address their arguments in Inward No.383/2015.
2. The brief facts of the case, as per the petitioners, are that on 29.4.2006 the petitioners had approached the respondent-Bank for grant of Home Loan/credit facilities with respect to the property bearing no.F-1/131, Sector 11, Rohini, New Delhi. On 29.4.2006, the respondent sanctioned the home loan of the petitioners in the sum of Rs.16,00,000/-, which was

repayable in ten years i.e. in 120 monthly installments in the sum of Rs.21,145/-, per month. Admittedly, titles documents of the property were deposited with the bank. Unfortunately, petitioner no.1 in the month of March, 2009, met with an accident due to which EMIs w.e.f. April, 2009, till May, 2010, could not be deposited, except the installment for the month of December, 2009. On 17.7.2009, the respondent Bank issued a notice to the petitioners under Section 13(2) of the SARFAESI Act for an outstanding dues of Rs.14,88,796/- and the account of the petitioners was declared as NPA since 1.7.2009. Thereafter on 25.5.2010 possession notice was issued by the Receiver to the petitioners. The petitioners thereafter approached the DRT by filing SA No.211/2010 wherein the Tribunal vide Order dated 2.6.2010 restrained the Bank from taking physical possession of the property in question. Aggrieved by the said order, the respondent-Bank filed an appeal before the DRAT. Vide Order dated 12.8.2010, the DRAT directed the petitioners to pay Rs.25,000/-, per month, together with interest on or before 25th day of each English Calendar month, to the respondent. The petitioners, pursuant to the Order passed by the DRAT, is stated to have been continuously paid the installments, except a few, which were later paid along with the subsequent installments. In the month of September, 2014, the petitioners received a possession notice dated 6.9.2014 issued by the Receiver. The petitioners filed an application before the DRT, wherein the DRT directed the petitioners to deposit Rs.1.00 lakh on 26.9.2014 and the remaining amount of Rs.3.17 lakhs in three equal installments. The petitioners claim to have deposited Rs.1.00 lakh on 26.9.2014. The respondent, through a Receiver, again issued possession notice dated 28.2.2015 to the petitioners. On receipt of notice, the petitioners filed an application before the Tribunal, wherein vide Order dated 17.3.2015 they were directed to deposit overdue amount of Rs.3.54 lakhs within three months in three equal installments. Being aggrieved, the petitioners filed an application for recalling the order of deposit of overdue amount, however, the said application was dismissed vide Order dated 20.5.2015. The petitioners thereafter filed an appeal, which was dismissed on 23.6.2015. Review petition filed against the order dated 23.6.2015 was also dismissed, which has led to the filing of the present writ petition.

3. Learned counsel for the petitioners submits that the impugned orders passed are contrary to the principles of natural justice, equity and fair play. Counsel further submits that the impugned orders have been passed by the DRT and DRAT on account of incorrect appreciation of true facts and circumstances of the case. It is further contended that the DRT has passed the impugned order without giving an opportunity of hearing to the petitioners, and, thus, they are liable to be set aside.

4. Learned counsel for the respondent-Bank enters appearance on an advance copy and submits that there is an overdue amount of Rs.2,94,192 whereas the total outstanding amount is Rs.12,24,003/-, which is due and payable by the petitioners. A copy of statement of accounts has been handed over by counsel for the respondent to the counsel for the petitioners in Court today.

5. We have heard learned counsel for the parties and considered their rival submissions. On the last date of hearing, a statement was made before us by learned counsel for the petitioners on instructions that certain amounts have been paid by the petitioner, which do not stand reflected truly by the Bank.

6. Since, it is an accounting matter, it is agreed by counsel for the parties that the matter may be listed before the DRT on 21.9.2015. Ordered accordingly.

7. Learned counsel for the respondent submits that no coercive action would be taken against the petitioners till 21.9.2015 provided one installment is paid by the petitioners within ten days from today.

8. While, we find no grounds to interfere in the impugned orders passed by the DRT and DRAT, we leave it open to the DRT and the respondent Bank to consider the request of the petitioner sympathetically for re-payment of balance amount in instalments.

9. Accordingly, present petition stands disposed of with the above observation.

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10. Applications stand disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 08, 2015

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