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

\+ W.P.(C) 2855/2016 & CM No.11957/2016 (for stay)

NARENDER ..... Petitioner

Through: Mr. S.S. Dahiya with Ms. Indu Garg & Ms. Sangeeta Gaur, Advs.

Versus

STATE BANK OF INDIA ..... Respondent

Through: Ms. Madhumeet Kapoor & Mr. R.M. Kapoor, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **05.04.2016**

1. This order is in continuation of the earlier order dated 1st April, 2016.

2. Though the counsel for the respondent Bank appears today but states that the matter be adjourned to enable the respondent Bank to file the reply.

3. However upon it being enquired from the counsel for the respondent Bank whether she is not interested in opposing the petition and does it not show the lackadaisical manner in which the respondent Bank is contesting the litigation, she states that she is aware of the facts and argue today itself to oppose the petition.

4. It is contended by the counsel for the respondent Bank that the petitioner has falsely portrayed that notices under Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 were not issued. It is contended that notices were duly issued and in fact Chief Metropolitan Magistrate (CMM) under Section 13(4) of the SARFAESI Act was also approached and

has vide order dated 19th March, 2016 directed taking over of the secured asset and remedy if any of the petitioner is under Section 17 of the Act before the Debt Recovery Tribunal (DRT). Copies of the notice under Section 13(2) of the SARFAESI Act and the order of the CMM are handed over in the Court and are taken on record.

5. However on enquiry whether the petitioner replied to the notice under Section 13(2) of the SARFAESI Act, the counsel for the respondent replies in the negative.

6. The counsel for the petitioner on enquiry whether the notices under Section 13(2) of the SARFAESI Act was received, states that his instructions are that it was not received. However he then shifts the argument to the mismatch in the amount due from the Statement of Account dated 10th March, 2016 of the respondent Bank and the amount shown as due in the notice dated 8th March, 2016 impugned in the petition and contends that a sum of Rs.10,00,000/- deposited by the petitioner in the loan account has not been accounted for. He has contended that as of today only about Rs.5,00,000/- would be due from the petitioner.

7. The counsel for the respondent Bank controverts and has handed over a Statement of Account dated 2nd April, 2016 which is taken on record and showing credit of Rs.10,00,000/- by cash repayment on 9th March, 2011.

8. I am of the view that this Court in exercise of jurisdiction under Article 226 cannot go into the question of the amount due under the loan account and the same is in the domain of the DRT. However with respect to

the argument of the counsel for the petitioner of mismatch, option has been given to the petitioner, to test the *bona fides* of the petitioner, to deposit the lesser of the two amounts in this Court. However the counsel for the petitioner is not agreeable thereto also and states that the petitioner would deposit only Rs.5,00,000/- which is due according to him.

9. The petitioner is also found to have suppressed the true facts as to the notice under Section 13(2) and steps under Section 13(4) of the SARFAESI Act and the petition is not maintainable for this reason also.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

APRIL 05, 2016
'gsr'..