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

+ **W.P.(C) 3476/2016**

**G R MALHOTRA AND ANR**

..... Petitioner

Represented by: Mr.Rajeeve Mehra, Sr.Adv.  
instructed by Mr.Aditya  
Malhotra, Adv.

versus

**CANARA BANK AND ORS**

..... Respondent

Represented by: Ms.Seema Gupta, Adv. for  
R-1/Canara Bank.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**  
**27.04.2016**

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CM 14891/2016

Exemption allowed subject to just exceptions.

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1. On advance copy of the writ petition being served, counsel as above appears for Canara Bank.
2. At the outset learned senior counsel for the petitioner concedes that as drafted the writ petition is ill-conceived and does not bring out the real grievance.
3. Action being initiated by Canara Bank to take possession of a property on the plea that the same is mortgaged and thereafter sell the same under SARFAESI Act 2002, resulted in the petitioners resorting to remedy under Section 17 of SARFAESI and they filed SA No.61/2008.

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4. Petitioners claim to be bonafide purchasers of the property in respect whereof action has been initiated by the bank under SARFAESI and wanted to establish that the officers of the bank were negligent concerning the mortgage in question. IA No.125/2015 was filed before the Debts Recovery Tribunal-I, Delhi praying that the petitioners be permitted to cross-examine the witness of the bank who had filed an affidavit in support of the pleas taken by the bank in opposition to SA No.61/2008.
5. Said application was dismissed by DRT-I Delhi vide order dated March 07, 2016 holding that proceedings under SARFAESI are summary.
6. An appeal was filed by the petitioners against the order dated March 07, 2016 before DRAT. On April 01, 2016 the Chairperson of DRAT issued notice in the appeal registered as Miscellaneous Appeal No.171/2016 and observed that the issue of seeking waiver of pre-deposit would be considered on the next date which was fixed as April 27, 2016. It happens to be today.
7. Order challenged in the writ petition is the order dated April 01, 2016 and the pleadings are that against an interim order passed by DRT, question of any pre-deposit does not arise. Argument is that unless a debt due is crystallized the question of any pre-deposit would not arise.
8. We note that vide impugned order dated April 01, 2016 DRAT has not called upon the petitioners to deposit any amount as condition before hearing the appeal. DRAT has simply observed that the issue of waiver of pre-deposit would be considered on the next date.
9. We are confident that if at all the bank presses the issue of pre-deposit being made, learned DRAT shall decide the issue with reference to the case law cited and the plea of the petitioners that unless debt is crystallized in a proceeding before DRT the question of any pre-deposit does not arise and

therefore concerning a miscellaneous interim order relating to right to cross-examine witnesses of the bank being declined, no pre-deposit is conceived of by law.

10. But the real problem is this. No stay of the order dated March 07, 2016 passed by DRT being granted by learned DRAT the DRT may proceed to decide SA No.61/2008. If petitioners loose, the final order if challenged would enjoin upon the petitioners to either deposit the amount as conceived of by SARFAESI or seek waiver thereof, which waiver may or may not be granted and if granted may be partial. The further problem is on account of there being a vacancy to the post of Chairperson DRAT, and as of today DRAT being non-functional.

11. Under the circumstances we dispose of the petition and application staying further proceedings in SA No.61/2008 before DRT-I, Delhi till appeal filed by the petitioners against the order dated March 07, 2016 passed by DRT-I, Delhi is decided by DRAT.

12. No cost.

**PRADEEP NANDRAJOG, J.**

**MUKTA GUPTA, J.**

**APRIL 27, 2016**

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