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

Date of decision: September 20, 2016

\+ W.P.(C) 6977/2016, CM No.28651/2016

PRADEEP AGARWAL

..... Petitioner

Through: Mr.Pallav Saxena with Ms.Bindu Das, Advs.

versus

STATE BANK OF INDIA AND ORS ..... Respondents

Through: Mr. Vipul Jai & Mr. Vipin Jai, Advs. for R-1 to 6
Mr. Samarendra Kumar, Adv. for R-3

CORAM:-
HON'BLE MS JUSTICE INDIRA BANERJEE
HON'BLE MR JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this writ petition is to the orders dated October 19, 2015 and June 2, 2016, whereby an application filed by the petitioner herein seeking amendment of the Securitization Application (for short 'SA') and the application seeking review were dismissed.

2. The facts as noted from the writ petition are, demand notices under Section 13(2) of the SARFAESI Act, 2002 were issued by respondents 1,3 and 5 against the petitioner and his property X-19, Hauz Khas

Enclave, New Delhi-110016 on December 11, 2013, May 7, 2014 and June 12, 2014. The respondents 1 to 6 took possession of the said property, which according to the petitioner, was notional and symbolic. On October 7, 2014 petitioner instituted SA No. 151/2014 before the DRT-I, Delhi. Respondents 1 and 2 herein filed written statement along with loan and security documents. On February 27, 2015 petitioner preferred IA 184/2015 seeking amendment of SA No.151/2014. The said application was dismissed vide order dated October 19, 2015. Thereafter, on November 26, 2015, the petitioner filed IA 1222/2015 seeking review of order dated October 19, 2015, which was also dismissed on June 2, 2016.

3. Mr. Pallav Saxena learned counsel appearing for the petitioner would draw our attention to page 187 of the paper book, which is part of the application filed by the petitioner seeking amendment of the Securitization Application No. 151/2014 to contend that the amendment was necessitated because the petitioner for the first time perused the documents i.e. Guarantee Deed dated February 24, 2009, Letter of Renewal dated October 17, 2011, Supplemental Deed of Guarantee dated October 24, 2011 and Guarantee dated April 19, 2013 filed by the respondent No.2. According to him, the petitioner has come to know

about the documents, which have been forged and manufactured against him as also the fact that the respondents 2, 4 and 6 sanctioned credit facilities amounting to `132 Crores without the consent and knowledge of the petitioner. According to him, the petitioner intended to add three paragraphs under the facts to be numbered as 5.112A, 5.112B and 5.112C with three grounds to be numbered as XLIX, L, LI. He would state, these amendments were relevant because the petitioner's case was that the documents, on which the respondent No.2 intended to rely upon, were forged and manufactured and such a plea need to be taken by giving relevant facts, in view of the provisions of Order 6 Rule 4 of the Code of Civil Procedure. He states, that the conclusion of the DRT on this application is contradictory, inasmuch as, on one hand the DRT has stated that the said facts, which sought to be incorporated by way of amendment, were existed at the time of initial filing of the SA, cannot be allowed by way of amendment but on the other hand, has stated that such a plea of fraud and fabrication of documents had already been taken by the petitioner in the present SA. Even otherwise, he states, that the petitioner shall, in his replication, take the plea that the documents are forged and manufactured but the said plea should not be rejected only on the ground that the same were not averred in the petition.

4. We note that Mr. Vipul Jai, Advocate appearing for respondents 1 to 6 (except respondent No.3) and Mr. Samarendra Kumar, Advocate appearing for R-3 (respondents 7 to 11 being proforma party) take a plea of maintainability of the petition on the ground that the remedy against the impugned orders would be before the Debt Recovery Appellate Tribunal. They also state that the present application is totally misconceived, inasmuch as the conclusion of the Tribunal that the petitioner had taken the plea of fraud and fabrication in the petition itself, and that would suffice the requirement of pleadings in that regard. He would state, in view of this plea, the amendment application was not required to be filed by the petitioner. This is only an attempt to delay the proceedings.

5. Having heard the learned counsel for the parties, without going into the aspect that the petitioner had an alternative remedy before the Debt Recovery Appellate Tribunal, noting the submissions made by the learned counsel for the respondents 1 to 6 that the plea, having been taken by the petitioner in the Securitization Application, the petitioner would be within his right to clarify/take a stand that on perusal of the documents as referred to above, which according to him are forged and manufactured in his replication and the stand of the petitioner shall be considered by the

Tribunal on merit, as we note, that, the Tribunal also held in its order dated October 19, 2015, that the plea of fraud and fabrication has been taken by the petitioner in SA. The writ petition is disposed of on the aforesaid terms. There shall be no order as to costs.

CM No.28651/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

SEPTEMBER 20, 2016*/ak*