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

\+ W.P.(C) 12033/2016

SUBHASH CHAND JAIN ..... Petitioner

Through Mr. Alok Gupta and Mr. D.K. Singh, Advocates.

versus

ALLAHABD BANK & ANR ..... Respondents

Through Mr. Rajesh Gautam, Mr. Gaurav Singh, Ms. Kreeti Joshi, Advocates and Mr. Subrata Biswas, AR for respondent No. 1.

**CORAM:**
**HON'BLE MS. JUSTICE INDIRA BANERJEE**
**HON'BLE MR. JUSTICE JAYANT NATH**

**O R D E R**

**% 21.12.2016**

**CM Nos. 47461/2016 and 47462/2016 (Exemption)**

Exemption allowed, subject to all just exceptions.

The applications stands disposed of.

**W.P.(C) 12033/2016 and CM No. 47460/2016 (stay)**

This writ petition has been filed questioning the proposal of the Recovery Officer-II, Debts Recovery Tribunal-III, Delhi to auction the property specified in the writ petition, which is hereinafter referred to as the 'said property'.

The petitioner claims to be the owner of the said property comprising inter alia land measuring 312 sq. yards, 150 sq. yards and 400 sq. yards of land (total 862 Sq. yards) purchased vide three registered deeds of conveyance, copies whereof have been annexed to the writ petition. The deeds of conveyance were apparently executed and registered in 1966.

The petitioner claims to be the absolute owner of the said property. According to the petitioner, the respondent bank initiated proceedings under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 against one Rajeev Ahuja and his wife Rajni Ahuja for recovery of their dues to the Respondent Bank in respect of finance obtained by them from the Respondent Bank.

It is the case of the Respondent Bank that the property bearing the No. IX/1817 out of Khasra No. 706/600/86/01/01; 367/355/5/5; 367/5/6 MIN., Gali No. 1, Kailash Nagar, Gandhi Nagar, Village Seelampur, Shahdara, Delhi-110031 in the name of Certified Debtor Nos. 1 and 2 i.e. Rajeev and Rajni Ahuja, is mortgaged to the Respondent Bank.

Significantly, the sale notice for auction of the property mortgaged by the Ahujas to the Respondent Bank, neither gives the full description nor the exact area of the property, sought to be put up for sale. The petitioner has produced a photocopy of a deed of conveyance executed in favour of Rajeev Ahuja for only 100 square meters of land with structures thereon. On the other hand, as observed above, the three sale deeds relied upon by the petitioner, relate to the same address, which prima facie indicates that the petitioner is the owner of 862 sq. Yards of land at the said premises and Rajeev Ahuja at best, the owner of 100 sq. meters.

It may be pertinent to note that in civil proceedings initiated by the petitioner against third parties, the petitioner has obtained interim orders on the basis of the registered deeds of conveyance annexed to the writ petition.

The petitioner made an application in the Debts Recovery Tribunal on 23.03.2016 for being impleaded respondent for the recovery proceedings initiated by the Respondent Bank, against the Ahujas. On the application being made, notices were directed to be issued. However, on 29.03.2016, the application under Section 9 filed by the Bank was allowed apparently without even noticing the pending application of the petitioner for being impleaded as respondent. Be that as it may, the petitioner has filed an objection before the Recovery Officer objecting to the sale of the property in question. The objection is yet to be decided. The property has, however, been notified for sale on 27.12.2016.

Learned counsel appearing on behalf of the respondent Bank strenuously contended that there was delay on the part of the petitioner in approaching the Court. The petitioner had applied for impleadment only seven days before the decree was passed. The petitioner was all along aware of the proceedings initiated by the respondent Bank against the Ahujas. It was also contended that a civil suit has been filed by the petitioner against the respondent Bank. No order has been obtained in the civil suit.

Even assuming that there has been delay on the part of the petitioner, that in itself cannot be ground to deny relief to the petitioner in these proceedings under Article 226 of the Constitution of India, when *prima facie* it appears that the sale notice includes properties which are covered by the three deeds of conveyance from which the petitioner claims title. The Respondent Bank prima facie has no power to auction properties not belonging to the borrower and/or the guarantor for realization of its dues against the borrower.

The Ahujas could not have created any mortgage in law or in fact of any property over which the Ahujas did not have title. There can be no question of sale of property owned by a third party in execution of a decree against the borrowers and/or guarantors of loan advanced by Banks and Financial Institutions. Our observations which are prima facie observations are not to be construed as any finding with regard to title. The question of whether the said properties claimed to be owned by the petitioners can be auctioned by the Respondent Bank to realize the dues of the Ahujas, will have to be decided by the Recovery Officer in accordance with law, in the light of the observations made above.

We direct the Recovery Officer to decide the objection of the petitioner as expeditiously as possible preferably within three weeks from the date of communication of this order. Pending decision of the Recovery Officer on the objection of the petitioner, the auction of the property pursuant to the sale proclamation dated 04.11.2016 shall remain stayed.

The writ petition is disposed of accordingly. Pending application is also disposed of.

*Dasti.*

**INDIRA BANERJEE, J**

**JAYANT NATH, J**

**DECEMBER 21, 2016**

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