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

\+ W.P.(C) 8991/2015 & CM No.20262/2015 (for stay)

BIMLA DEVI ..... Petitioner

Through: Mr. U.M. Tripathi, Adv.

Versus

ORIENTAL BANK OF COMMERCE & ORS ..... Respondents

Through: Ms. Ekta Sikri & Ms. A. Sharma, Advs. for R-1.
Mr. Rajesh Rattan, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **12.01.2016**

1. The petition seeks mandamus for declaring the bank loan granted by the respondents No.1&2 Banks in favour of the respondents No.3&4 on the security of the immovable property which the petitioner claims to be owned by her husband, as null and void.

2. It is *inter alia* the case of the petitioner that the subject property was constructed without any sanction plan and the respondents No.1&2 Banks erred in granting the loan on the security of the subject property for this reason and thus the loan is bad.

3. The petition came up first before this Court on 18th September, 2015 when the counsel for the respondent No.1 Bank appearing on advance notice informed that in a proceeding filed by the Banks before the Debt Recovery Tribunal (DRT), a Recovery Certificate had been issued and the subject property has been sold by public auction and Sale Certificate stands issued in favour of the purchaser.

4. The counsel for the petitioner on that date feigned ignorance of any proceeding before the DRT.

5. The petitioner thereafter on 13th October, 2015 sought deletion of the respondents No.3&4 and which was allowed.

6. The respondents No.1&2 Banks have filed their counter affidavits.

7. The sole ground urged for having the loan transaction declared void being that it could not have been on the security of the property, the construction whereof was unauthorized, the counsel for the petitioner has been asked to show the provision in this regard.

8. The counsel for the petitioner has handed over in Court a copy of the communication dated 17th November, 2006 of the Reserve Bank of India (RBI) in this regard.

9. However on enquiry as to when the subject loan was sanctioned, it is stated that it was sanctioned in the year 2002. On further enquiry whether there was any such guideline of the RBI applicable in the year 2002, the counsel for the petitioner is unable to cite any.

10. I am of the view that the writ petition is not maintainable not only for the aforesaid reason but also for the reason of the petitioner having given up the respondents No.3&4 from the array of parties. In the absence of the respondents No.3&4, to whom the loan was granted, the petition is not maintainable.

11. The counsel for the petitioner states that the respondents No.3&4 have been declared as proclaimed offender in the criminal proceedings.

12. The same would still not entitle the petitioner to maintain the petition in their absence. The petitioner ought to have got them proceeded *ex-parte* on the basis of the order declaring them as proclaimed offender.

13. On enquiry, the counsel for the petitioner today confirms that the proceedings aforesaid were held before the DRT.

14. The counsels for the respondents No.1&2 Banks rightly contend that the petition is liable to be dismissed for the reason of concealment. They state that the petitioner herein had contested the proceedings before the DRT on the same grounds as taken in this petition and which did not find favour.

15. Though the counsel for the petitioner does not controvert that the petitioner had filed written statement in the DRT but contends that her lawyer thereafter did not follow up the matter further.

16. The counsels for the respondents No.1&2 Banks also contend that husband of the petitioner, who according to the petitioner also is the owner of the property, had also filed a writ petition in this Court and which was dismissed and which has also not been disclosed in this proceeding.

17. Suffice it is to state that the petition is not only misconceived and not maintainable but even otherwise is in abuse of the process of Court and is dismissed with costs of Rs.5,000/- to each of the respondents No.1&2 Banks.

RAJIV SAHAI ENDLAW, J.

JANUARY 12, 2016
'gsr'..