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

+ W.P.(C) 8560/2015

SYNDICATE BANK

..... Petitioner

Represented by: Mr.Suresh Arora, Advocate with
Ms.Reena Jain Malhotra, Advocate

versus

M/S JAI RAOD CARRIERS AND ANR

..... Respondents

Represented by: Mr.Pallav Saxena, Advocate with
Ms.Bindu Das, Advocate for R-1
Mr.Manish Goyal, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
01.03.2016

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1. The grievance by the appellant is to the order dated July 24, 2015 waiving pre-deposit to be made by the first respondent and DRAT entertaining the appeal against the order passed by the DRT holding that the sale of the asset of respondent No.1 which was purchased by respondent No.2 was not vitiated. As per the appellant, in view of the law declared by the Supreme Court the amount had to be secured because if the sale is ultimately set aside the money realized by the bank would have to be returned to respondent No.2.

2. A very strong prima-facie case in favour of a party would be a good ground to waive pre-deposit because if the sale is set aside and the bank returns the money to the highest bidder, the asset would remain to be sold in

satisfaction of the debt determined.

3. We find that before the sale was effected the borrower i.e. the appellant before the DRAT was not informed and in view of the law declared by the Supreme Court in the decision reported as (2014) 5 SCC 610 Mathew Varghese Vs. M.Amritha Kumar & Ors., such a sale would be a constitutional violation and would nullify the ultimate sale. (Refer para 30)

4. The reason given by the DRAT may be unsound i.e. that the bank has already realized the debt, for the reason if the appeal succeeds the money realized would have to be returned to respondent No.2. The good reason would be that in said eventuality the asset would remain and that the respondent No.1 has a very strong prima-facie case for the sale to be set aside in view of the law declared by the Supreme Court in Mathew Varghese's case (supra).

5. The writ petition is dismissed.

6. No costs.

CM No.18488/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 01, 2016

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