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

% *Date of Decision : January 20, 2016*

+ **W.P.(C) 9739/2015**

MEENA AGGARWAL Petitioner
Represented by: Mr.Sanjeev Bhandari, Advocate

versus

PUNJAB NATIONAL BANK & ORS. Respondents
Represented by: Mr.R.P.Vats, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. It is trite that if there is no power vested in a statutory authority to do an act, any step in the direction towards the doing of the act can be interdicted by a Court at the very initial stage.
2. Execution proceedings before the Debts Recovery Tribunal, as per the mandate of Section 29 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, make applicable THE INCOME-TAX (CERTIFICATE PROCEEDINGS) RULES, 1962 to the execution proceedings, Rule 39 whereof reads as under:-

“39. Delivery of immovable property in occupancy of defaulter:-

(1) Where the immovable property sold is in the occupancy of the defaulter or of some person on this behalf

or of some person claiming under a title created by the defaulter subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 65 of the principal rules, the Tax Recovery Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom the purchaser or any person whom the purchaser may appoint to receive delivery on his behalf in possession of the property, and if need be, by removing any person who refuses to vacate the same.

(2) For the purposes of sub-rule (1), if the person in possession does not afford free access, the Tax Recovery Officer may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the purchaser, or any person whom the purchaser may appoint to receive delivery on his behalf, in possession.”

3. Learned counsel for the respondent has not been able to show to us any rule which enjoins a debtor or a guarantor in possession of immovable property which has been attached for sale pursuant to a decree passed by the Tribunal to deliver vacant possession thereof to an officer appointed by the Tribunal or the Recovery Officer.

4. The facts to be noted are that recovery proceedings by the respondent-bank initiated under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, registered as OA No.255/2011, resulted in the claim being decreed on September 10, 2014. The decree is in sum of ₹5,86,10,611/- (Rupees Five Crores Eighty Six Lacs Ten Thousand Six Hundred and Eleven only) together with interest @ 14% per annum on monthly rest concerning the Cash Credit Account and 14.5% per annum on

Working Term Loan Account. The decree attained finality.

5. The bank initiated execution proceedings and counsel for the bank stated before the Recovery Officer DRT-II on September 04, 2015 that possession of property bearing No.BW-67A DDA Shalimar Bagh, New Delhi 110088, secured by way of an equitable mortgage by the writ petitioner, should be taken over to which counsel for the writ petitioner objected. The Recovery Officer directed that the writ petitioner should file objections regarding physical possession of the property being taken over. Said order passed by the Recovery Officer was challenged before the Debt Recovery Tribunal-II, which set aside the order on September 08, 2015 but observed that the respondent-bank would be at liberty to move an application praying that physical possession of the property which was attached be taken over.

6. The recovery proceedings were listed before the Recovery Officer-II on September 09, 2015, who noted that the bank had not filed any application for possession of the property to be taken over and thus deferring the proceedings to October 14, 2015 he directed the bank to file an application praying that possession of the property be directed to be handed over.

7. Claiming that the Recovery Officer DRT-II was proceeding in a manner not envisaged by law and had made certain oral observations threatening the writ petitioner, an application was filed under Section 17A of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 to the Debts Recovery Appellate Tribunal praying that for the reasons mentioned therein the proceedings pending before Recovery Officer DRT-II be transferred, which application has been dismissed by the Debts Recovery

Appellate Tribunal opining that the writ petitioner could take appropriate remedy when an effective order is passed by the Recovery Officer of the Debts Recovery Tribunal-II.

8. We have come across orders passed by the Recovery Officer attached to the DRT-II, and would observe that he seems to be passing orders post haste which indicate some kind of a pressure tactics upon the judgment debtors. He has been appointing persons with no knowledge of the procedures to be followed while conducting sale of immovable properties and his orders are giving birth to unnecessary litigation.

9. In the instant case, suffice it to highlight that there is no power vested in the Recovery Officer to take over vacant physical possession of a property which has been attached to satisfy a claim decreed under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the property is put to sale. It is only after the property is sold is a right vested in the auction purchaser to seek possession of the property.

10. It is apparent that the orders passed by the Recovery Officer in the instant case are a pressure tactic.

11. We dispose of the writ petition directing the Chairman of the Debts Recovery Appellate Tribunal to transfer the execution proceedings pending before the Recovery Officer DRT-II in the instant case to some other Recovery Officer.

12. Copy of this order would be sent to the Recovery Officer DRT-II for compliance and as a word of caution not to abuse the power and discharge duties honestly in accordance with law.

13. No costs.

CM No.23361/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 20, 2016
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