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

% *Date of Decision : January 12, 2016*

\+ **W.P.(C) 9803/2015**

SURESH CHANDRA SHARMA ..... Petitioner
Represented by: Mr.Nitin Nanda, Advocate with Mr.Anish Dhingra, Advocate

versus

PUNJAB NATIONAL BANK & ORS ..... Respondents
Represented by: Mr.Aditya Prasad, Advocate with Mr.Sriram Kamal, Mr.Amit Kumar Sinha and Mr.S.K.Mehta, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

PRADEEP NANDRAJOG, J. (Oral)

1. Issuing notice in the writ petition, operation of the impugned order was stayed requiring petitioner to deposit ₹25,00,000/- (Rupees Twenty Five Lacs only), and since there was some ambiguity in the order dated October 14, 2015, on November 03, 2015 it was clarified that the deposit would be with the respondent No.1 bank but in the name of the petitioner. Said interim order has been complied with.

2. As per the impugned order dated September 16, 2015, the Debt Recovery Tribunal-III granted a stay in favour of the petitioner in SA No.316/2015 requiring petitioner to deposit ₹50,00,000/- (Rupees Fifty Lacs only). The proceedings were initiated by the petitioner when the first

respondent initiated proceedings under SARFAESI Act concerning the first floor of property bearing Municipal No.4764/1, 23 Ansari Road, Darya Ganj, mortgaged to the bank by Rattan Chand Jain on August 31, 2013. DRAT has upheld the order.

3. The petitioner claims that under an agreement to sell dated October 07, 2005 Rattan Chand Jain agreed to sell entire property No.4764/1, 23 Ansari Road, Darya Ganj to him. Agreed sale consideration was ₹91,11,001/- (Rupees Ninety One Lacs Eleven Thousand and One only) and having received ₹27,00,000/- (Rupees Twenty Seven Lacs only), ₹66,11,011/- (Rupees Sixty Six Lacs Eleven Thousand and Eleven only) was payable. As per the petitioner the time for complying with the agreement to sell was extended on December 06, 2005, January 17, 2006, February 10, 2006, April 17, 2006 and May 13, 2006, by which time, and as recorded in the last 3 extension agreements save and except part ground floor and mezzanine floor the possession of the remaining constructed portion of the building was handed over to it.

4. It being settled law that a writ court would interfere with a discretionary order if while exercising the discretion a Tribunal overlooks a legal position, we hold that instant case is a fit case for discretion to be exercised for the reason neither DRT nor DRAT took into account Explanation II to Section 3 of the Transfer of Property Act, 1882, which reads as under:-

> *"Explanation II –*
>
> *Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual*

possession thereof."

5. Taking the first floor of the property as a security under a mortgage, the respondent-bank acquired an interest in the property and would thus be deemed to have noticed of the possessory right of the writ petitioner is the argument advanced before us, which has been overlooked by the DRT as also the DRAT.

6. We dispose of the writ petition directing that till SA No.316/2015 filed by the petitioner is decided, action initiated by the respondent-bank under Section 13 of SARFAESI Act shall remain stayed on the petitioner depositing in its name ₹25,00,000/- (Rupees Twenty Five Lacs only) with the respondent No.1-bank, which deposit has been made by the petitioner.

7. No costs.

<u>CM No.23578/2015</u>

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JANUARY 12, 2016
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