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

\+ W.P.(C) 431/2016

CANARA BANK ..... Petitioner

Represented by: Mr.Pradeep Dewan, Sr.Adv. instructed by Mr.Ashish Kumar Sharma, Adv.

versus

M/S PREMIER VINYL FLOORING LTD. & ORS ..... Respondent

Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% **18.01.2016**

CM 1732/2016

Exemption allowed subject to just exception.

W.P.(C) 431/2016

1. The factual matrix to be captured by us is short. The writ petitioner initiated recovery proceedings against the principal borrower and the guarantors by invoking remedy under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993.

2. Thereafter the borrower filed an application pleading therein that certain goods which were hypothecated to the bank should be directed to be sold.

3. The said application was disposed of by the Debts Recovery Tribunal on August 28, 2002, with the direction that under the supervision of the officers of the writ petitioner bank the respondents before the Debts

Recovery Tribunal may sell the goods.

4. The order notes that the goods were lying at the warehouses at Ashgabat, Bandarbas, Durban, Aden, Assab, Dubai, Egypt, Felixstowe and Sudan.

5. Thereafter another application was filed. It was filed by the bank praying therein that in view of the order dated August 28, 2002 directions be made to the respondents before the Debts Recovery Tribunal to take steps to dispose of the goods. Said application was disposed of by the Debts Recovery Tribunal on March 27, 2014. The view taken by the Debts Recovery Tribunal was that it was the legal right of the bank to sell the hypothecated goods. Noting that the respondents were taking no steps to sell the goods the bank was permitted to take steps for sale of the goods in accordance with law.

6. The bank thereafter moved an application praying therein that the respondents should be charged with the obligation to sell the hypothecated goods. The said application was disposed of by an order dated July 16, 2014. The direction issued was that since the respondents were not cooperating the bank could simply issue a notice and it was for them to participate in the sale. The bank was directed to effect the sale.

7. The said order was taken in the appeal before the Debts Recovery Appellate Tribunal which disposed of the appeal by the impugned order Dated April 20, 2015, holding that it found no reason to interfere with the directions issued by the Debts Recovery Tribunal. Cost in sum of ₹10,000/- has been imposed upon the writ petitioner.

8. The real grievance of the writ petitioner has unfortunately not been pleaded and therefore not brought to the notice of the Debts Recovery

Tribunal nor the Debts Recovery Appellate Tribunal.

9. Since the goods in question which are hypothecated with the bank, the principle of mitigation of damages would require the bank to take all reasonable steps to take charge of and sell the hypothecated goods and appropriate the sale proceedings from the dues payable to it.

10. Thus, looked at from the point of law the impugned orders cannot be faulted.

11. However the problem would lie in the expenses to be incurred and procedural formalities to be completed; which probably would require the joint participation in the sale by the respondents.

12. Learned counsel for the writ petitioner states that if the bank has to take steps to realise the hypothecated goods and sell them in the market the money which would be spent by the bank may exceed the sale proceeds and thus the exercise would be one in futility. But if the respondents through their agents in the various countries where the goods were lying were to take possession of the goods and sell the same the expenses would be less.

13. However in the pleadings before the Debts Recovery Tribunal as also the Debts Recovery Appellate Tribunal no pleadings, much less with particulars, i.e. amount which would be spent by the bank to realise the goods and sell the same have been pleaded. What procedural steps have to be taken to take possession of the goods have not been pleaded. The expenses to be incurred have not been pleaded.

14. Refusing to interfere with the impugned order on the existing pleadings we would simply observe that if the bank were to file an application before the Debts Recovery Tribunal pointing out therein in its pleadings the technical, administrative and financial difficulties faced by the

bank, the said application would be decided by the Debts Recovery Tribunal as per law. We would expect the Debts Recovery Tribunal to take into account the fact that it would be useless for the bank to be directed to realise the hypothecated goods lying in warehouses in various ports, if administrative expenses are likely to exceed the sale proceeds.

15. No cost.

<u>CM 1731/2016 (stay)</u>

Dismissed as infructuous.

<u>CM 1733/2016 (dispensing serving upon R-6 to R-49)</u>

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 18, 2016
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