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

\+ W.P.(C) 12272/2015

ANJANA KAPOOR

..... Petitioner

Represented by: Mr.R.K. Mittal, Adv.

versus

STATE BANK OF INDIA

..... Respondent

Represented by: Mr.S.N. Relan, Adv.

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

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

% 15.02.2016

<u>CM Nos.32495-32496/2015</u>

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

<u>W.P.(C) 12272/2015</u>

1. Having heard learned counsel for the parties, we dispose of the writ petition setting aside the order dated July 15, 2015 passed by the Debts Recovery Tribunal as also the Appellate Order dated December 08, 2015 passed by the Debts Recovery Appellate Tribunal and as a consequence we restore SA No.366/2013.

2. Our reason for passing the order is that as per the writ petitioner the property bearing No.144, Joshi Road, Karol Bagh, New Delhi is co-owned by the petitioner, one Pradeep Kapoor son of Madan Lal Kapoor, and one Veenu Kapoor w/o Praveen Kapoor. Pradeep Kapoor is the brother-in-law of Anjana Kapoor. Veenu Kapoor is the sister-in-law of Anjana Kapoor.

3. According to her, the property is yet to be divided. There was no deed of partition and yet the respondent No.1 bank accepted the property as a security by permitting the same to be mortgaged at the instance of only Veenu Kapoor.

4. If this be so, it was the duty of the Debts Recovery Tribunal to decide whether the mortgage was valid. The validity of the mortgage had to be seen in light of the pleadings made by the petitioner, as per which there were three co-owners of the property and merely because title deeds were with one co-owner the same could not have been offered as a security.

5. In the order dated July 15, 2015 the Debts Recovery Tribunal has noted aforesaid facts but still proceeded to dispose of the challenge to the bank proceeding under SARFAESI by recording that interest @ 12% would be payable. Time has been granted to make the payment. We simply fail to understand the logic of the order dated July 15, 2015.

6. If the petitioner was neither a borrower nor a guarantor, the grievance of the petitioner concerning action taken under SARFAESI had to be decided by the Debts Recovery Tribunal.

7. The Appellate Order also suffers from the same taint.

8. That the appellant wishes to settle the matter with the bank is an independent issue and has not to be confused with the issue that as per the

writ petitioner she is neither the principal borrower nor the guarantor. As per her the property offered as security by Veenu Kapoor, her sister-in-law could not have been accepted by the bank as security because title documents show that there were three co-owners of the property.

9. SA No.366/2013 is accordingly restored for fresh adjudication before the Debts Recovery Tribunal.

10. We note that the petitioner claims to have deposited ₹17,19,015/- with the respondent No.1 bank. At the remanded proceedings the Debts Recovery Tribunal would look into this aspect of the matter as well. In the meantime, no coercive action qua property bearing No.144, Joshi Road, Karol Bagh, New Delhi shall be taken by the bank.

11. No costs.

Dasti.

<u>CM No.32494/2015</u>

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 15, 2016
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