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

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*Date of decision: 03.03.2017*

+ C.R.P. 53/2017 and CM No.8460-62/2017

MEERA SAIKIA

..... Petitioner

Through Mr.Arunabh Chaodhur and Mr.Karma  
Dorjee, Advocates.

Versus

PUNJAB NATIONAL BANK

..... Respondent

Through Mr.Jagat Arora, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. By the present petition filed under Section 115 CPC, the petitioner seeks to impugn the order dated 26.11.2016 and 02.06.2015 passed by the trial court. By order dated 02.06.2015, the suit filed by the petitioner was dismissed as withdrawn. By order dated 26.11.2016 an application filed under Section 114 read with Order 47 CPC for review of the order dated 02.06.2015 was also dismissed.
2. The petitioner filed a suit seeking a decree of cancellation of various documents regarding a guarantee alleged to have been executed in favour of the respondent and also for mandatory injunction to direct the respondent to return the file of the property at DLF II, Gurgaon which is in their possession.
3. The grievance of the petitioner is that the petitioner filed an application

under Order 23 Rule 1 (3) (b) CPC for liberty to withdraw the suit with liberty to file a fresh suit based on the same cause of action on the ground that an objection has been taken about the maintainability of the suit in view of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the SARFAESI Act) which bars jurisdiction of civil courts. It was stated that the petitioner has been advised to withdraw the present suit and move an appropriate court/forum to assail the deed of agreement of guarantee.

4. By the impugned order dated 02.06.2015, the trial court noted the submissions of the learned counsel for the petitioner that he wants to withdraw the case simplicitor. The statement of the counsel was recorded and the suit was dismissed as withdrawn subject to costs of Rs.4,000/-.

5. The petitioner filed a review petition pointing out that her application was not for withdrawal of the suit simplicitor but for withdrawal with liberty to approach appropriate forum. It is urged that the counsel had no instructions to withdraw the suit simplicitor as has been done in the present case. Hence, it was urged that the suit could be allowed to be withdrawn as sought for by the petitioner, namely, with liberty to approach the appropriate forum or the application should have alternatively been dismissed.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the petitioner has reiterated his submissions. He further points out that the suit was the only action taken by the petitioner to protect her sole residential property and that presently no proceedings have been commenced before the DRT under Section 17 of the SARFAESI Act. Learned counsel for the petitioner also relies upon the observations made by the District Magistrate, Gurgaon whereby the District Magistrate has stated

that if the agreement of guarantee is fake, then it is for the petitioner to approach a civil court.

8. Learned counsel for the respondent has pointed out that pursuant to the proceedings before the Metropolitan Magistrate, the possession of the property has been taken on 07.04.2015. He is not aware at what stage the auction proceedings are regarding the property.

9. The Division Bench of this court in the case of ***Paul Properties Pvt. Ltd. & Anr. v. Estate Officer Life Insurance Corporation of India & Anr., LPA 298/2010 (MANU/DE/1511/2010)*** held as follows:-

“33. At this juncture, we think it appropriate to observe that on a keener scrutiny of the order of the proceedings before the learned Single Judge, it is clear that it is an unequivocal concession with regard to a finding of fact which has been arrived at by the Estate Officer. While the learned Single Judge was going to dismiss the writ petition, time was sought for and thereafter, concession was given. The concession of a counsel in a court of law has its own sacrosanctity. It is not the case where there was no consultation whatsoever. On a scrutiny of the entire gamut of the facts, it emerges with utmost clarity which can be envisioned that a maladroit attempt was made to take a somersault and wriggle out of the same. In case the same, if we allow ourselves to say so, is permitted, it will usher in a state of anarchy in the process of adjudication and the high tradition of the Bar and the acceptance of statements made at the Bar would be in jeopardy. The law does not countenance the same either in the expanse of substantive law or in the expansion of adjective law.”

10. Accordingly, once a counsel has made a concession regarding any aspect, the courts cannot normally go beyond the said concession. There is no merit in the present contention of the petitioner that the counsel was not instructed to withdraw the suit.

11. In any case, the learned counsel appearing for the respondent submits that the remedy that is available to the petitioner is a statutory remedy under Section 17 of the SARFAESI Act to approach DRT. He submits that the respondent would have no objection in case such an application is filed by the petitioner and the same can be dealt with on merits by the concerned tribunal.

12. In my opinion, that would be the correct statutory position. The said remedy is available to the petitioner to challenge the proceedings initiated by the respondent. They are free to avail the same. In case an issue of limitation is raised, they are free to approach the tribunal with a request to condone the delay in view of the suit/present proceedings initiated by the petitioner as per law.

13. As far as the reliance of the learned counsel for the petitioner on the observations of the District Magistrate, Gurgaon, the same is per incuriam. The Division Bench of this court in LPA No. 699/2015 titled as ***“AGARWAL TRACOM PVT LTD. vs. PUNJAB NATIONAL BANK & ORS.”*** dated 11.05.2016 relying on judgments of the Supreme Court has held that the appropriate remedy for the petitioner is to approach DRT under Section 17 of the SARFAESI Act.

14. In view of the above, the petition stands disposed of.

15. All pending applications also stand disposed of.

**JAYANT NATH, J**

**MARCH 03, 2017**

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