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

\+ W.P.(C) 1353/2017

OMWATI & ORS ..... Petitioners

Through Mr. Vijay Kumar and Ms. Sarika, Advocates.

versus

BANK OF MAHARASHTRA & ANR ..... Respondents

Through Mr. Abhindra Meheshwari and Ms. Sudha Shukla, Advocates for respondent No. 1.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

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

% **15.02.2017**

<u>CM No. 6181/2017 (Exemption)</u>

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

<u>W.P.(C) 1353/2017 and CM No. 6180/2017 (direction)</u>

1. This writ petition is directed against an order dated 06.02.2017 passed by the Debts Recovery Appellate Tribunal, Delhi in Miscellaneous Appeal No. 54/2017whereby, the Debts Recovery Appellate Tribunal has restrained the respondents from dispossessing the petitioners from their respective properties as specified in the writ petition, subject to the condition of deposit of Rs.50 lacs by each of the petitioners before 17.02.2017, being the next

date of hearing.

2. As submitted by learned counsel appearing on behalf of the petitioners, payment of Rs.50 lacs by each of the petitioners would add to a total sum of Rs.1,50,00,000/-.

2. The bank claims that the property in question was mortgaged to the respondent bank by Smt. Tara Joshi, from whom the petitioners claim to have purchased the properties, to secure loans granted by the respondent bank to the proprietorship concern of Smt. Tara Joshi's husband.

3. The bank initiated proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and attempted to take possession under Section 14 of the said Act. However, possession has not yet been taken. The petitioners claim to be family members who are bonafide purchasers of the properties in question, for consideration, without notice of the mortgage in favour of the respondent bank. Whether the petitioners are bonafide purchasers, whether any consideration has at all been paid, and if so how much, whether the properties are at all mortgaged, are issues, which are to be decided before the appropriate forum.

4. The petitioners filed a special application under Section 17 of the SARFAESI Act being S.A. No.Nill of 2017 filed vide Diary No.29, dated 27.01.2017 in the Debts Recovery Tribunal-I, Delhi. The application filed by the petitioners was dismissed, whereupon, the petitioners filed an appeal before the Debts Recovery Appellate Tribunal, Delhi, in which the order impugned in this writ petition has been passed. The petitioners are aggrieved with the impugned order of the learned Appellate Tribunal, in so far as the

interim protection granted to the petitioners against dispossession from their respective properties, is subject to deposit of Rs.50 lacs by each of the petitioners, and / or in other words, a total amount of Rs.1.50 crores. The petitioners are all members of the same family.

5. Section 18 of the SARFAESI Act which provides for appeal to the Appellate Tribunal provides as follows-

> ***"18. Appeal to Appellate Tribunal***
>
> *(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:*
>
> *PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:*
>
> *PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:*
>
> *PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.*
>
> *(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."*

6. The definition of 'borrower' as given in Section 2 (1) (f) of the SARFAESI Act, includes any guarantor or any person who has created a

mortgage or pledged property as security for financial assistance, apart from the person who has actually been advanced a loan. The predecessor in interest of the petitioners is apparently 'borrower' within the meaning of the expression 'borrower', as defined in the SARFAESI Act.

7. However, under Section 18, an appeal may not only be filed by a borrower, but also by others aggrieved by an order under Section 17 of the SARFAESI Act. Under the said Section, different fees may be prescribed for appeals by borrowers and appeals by third persons.

8. Under Section 18 and in particular the second proviso to Section 18(1) of the SARFAESI Act, no appeal is to be entertained unless the borrower has deposited with the Appellate Tribunal, 50% of the amount of debt due from him, as claimed by the secured creditor, or determined by the Debts Recovery Tribunal, whichever is less.

9. The proviso reads that no appeal is to be entertained unless the borrower has deposited with the Tribunal 50% of the amount due from him. The proviso, however, has to be meaningfully construed to provide that no appeal of a borrower is to be entertained, unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from the borrower, as claimed by the financial institution, or as determined by the Debt Recovery Tribunal, whichever is less. If the proviso is literally to be interpreted to mean that no appeal can at all be entertained unless the borrower deposits 50% of the amount, claimed by the financial institution, irrespective of whether the appeal has been filed by the borrower, or any other aggrieved person, the right of appeal of aggrieved third persons conferred by Section 18(1) of SARFAESI Act would be rendered nugatory.

10. On a reading of Section 18, it is clear that the liability to deposit is that of a borrower. The SARFAESI Act does not contain any provision whereby any person who is not a borrower can be compelled to deposit the dues of the borrower to avail his right of appeal, or to avail interim protection from dispossession or for that matter, any other interim relief, pending disposal of his appeal.

11. However, in our view, the Appellate Tribunal might, in exercise of its inherent powers, impose such conditions for grant of an interim order, as it may deem appropriate, since proceedings before the Debt Recovery Tribunal / Appellate Tribunal are judicial proceedings and the Debt Recovery Tribunal / Appellate Tribunal are vested with the powers of a Civil Court under the Civil Procedure Code, though they are not bound by the procedure laid down by the Code. The power of the learned Tribunal to call for a deposit is also implicit in Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. However, the condition of deposit of Rs.50 lacs each by petitioners who claim to be bonafide purchasers for consideration, not connected in any way with the borrower, seems to be harsh.

12. The appeal has been listed before the Debt Recovery Appellate Tribunal on 17.02.2017, that is, the day after tomorrow. We direct the Debts Recovery Appellate Tribunal to consider the prayer of the petitioners in accordance with law on the basis of the materials available on record. Till such time, as the prayer of the petitioners for interim stay is disposed of, status quo shall be maintained with regard to the properties in question. Prayer for interim relief shall be disposed of preferably within one month

from date. There will also be an order of injunction restraining the writ petitioners herein from transferring, selling, encumbering, parting with the possession or otherwise creating any third party interest in respect of the property in question. As offered by learned counsel appearing on behalf of the petitioners, the title deeds in respect of the said properties shall be kept in deposit with the Registrar of the learned Appellate Tribunal.

13. The writ petition is disposed of. Pending application also stands disposed of.

13. Copy of the order be given *dasti* under the signature of the Court Master.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 15, 2017

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