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

\+ W.P.(C) 2372/2017

SYNDICATE BANK ..... Petitioner

Through Mr.V.Sudeer & Mr.R.S. Raja, Advs.

versus

M/S SSP TRADEX PRIVATE LTD. & ORS ..... Respondents

Through Mrs.Pratibha M. Singh, Sr. Adv. with Mr.B.S. Nagar, Adv.

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

O R D E R

% 14.03.2017

C.M. No.10194/2017 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

W.P.(C) 2372/2017 & CM Nos. 10192-93/2017 (stay)

In this writ petition, the writ petitioner Syndicate Bank has challenged an order dated 20th February, 2017 passed by the Learned Debt Recovery Appellate Tribunal Delhi, dismissing the Appeal No.439 of 2016 filed by the petitioner bank, on the ground of disobedience of an order of the learned Appellate Tribunal directing the petitioner Bank to deposit Rs.2 crores with the Registrar of the Appellate Tribunal.

The petitioner Bank, a Nationalised Bank lent and advanced money to the Respondent No.2, M/s Nidhi Builders against mortgage of the property being Flat No.9, Dwarka, New Delhi, hereinafter referred to as the property.

The petitioner bank initiated proceedings against the said M/s Nidhi Builders for recovery of its dues. In course of the proceedings it was decided to sell the property that was mortgaged to the petitioner bank.

The respondent No.1 M/s SSP Tradex Private Ltd. Offered Rs.21 crores for purchase of the property in question and deposited a sum of Rs.2 crores by way of earnest deposit.

The sale, however, did not materialise. While the petitioner bank contended that the respondent No.1, M/s SSP Tradex Private Limited had not paid its balance dues in terms of the order of the Learned Debt Recovery Appellate Tribunal, the Respondent No.1 M/s SSP Tradex Private Limited contended that there were litigations pertaining to the property which had been suppressed and that an Arbitral Tribunal had also been constituted pursuant to the order of this Court in its Original Side, for adjudication of the disputes with regard to the property in question.

The Respondent No.1, M/s SSP Tradex Private Limited, made an application for refund of Rs.2 crores paid by way of earnest deposit, which was allowed by the Debt Recovery Tribunal, New Delhi by an order dated 8th September, 2016

Being aggrieved by the said order dated 8th September, 2016, the petitioner bank filed an appeal being Misc. Appeal No.439/2016 in OA No.7 of 2010 which was renumbered as I.A. No.615/2016. The learned Debt Recovery Appellate Tribunal passed an order staying the operation of the order dated 8th September, 2016 under appeal, subject to the condition that the petitioner bank would deposit a sum of Rs.2 crores with the Registrar of the learned Debt Recovery Appellate Tribunal within a week.

Challenging the aforesaid order of Debt Recovery Appellate Tribunal, the petitioner bank filed a writ petition in this Court. This Court did not deem it appropriate to interfere with the aforesaid order of the Learned Debt Recovery Appellate Tribunal. The writ petition was dismissed with the observation that while it was true that Section 21of the Recovery of Debts due to Banks and Financial Institutions, Act, 1993 did not strictly apply in case of direction on a bank to refund money, the Tribunal could in exercise of its inherent power call upon a bank to make a deposit.

The judgment and order of this Court dismissing the writ petition was questioned by filing an application for review of the said judgment and order. May be rightly, may be not, the petitioner contended that this Court had erred in arriving at its finding that the Tribunal had the inherent power to call upon the bank to make a deposit.

By a judgment and order dated 15th February, 2017 the review petition was dismissed with the following observations:-

> "10. Mr.Sudeer, appearing for the applicant Bank strenuously argued that the Tribunal does not have any inherent power. In support of such submission Mr.Sudeer cited the judgments of the Supreme Court in ***Standard Chartered Bank Vs. Dharmender Bohi,*** 2013 (12) SCALE 124; ***Union of India Vs. Orient Paper and Industries Ltd.*** (2009) 16, SCC 286 and ***Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Rly. Co. Ltd***. AIR 1963 SC 217.
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> 11. Unfortunately, it is settled law that this Court cannot in the garb of review of a judgment and order rehear the writ petition on merits. A review is by no means an appeal in disguise whereby an erroneous decision can be corrected after re-hearing the case as held by the Supreme Court in ***Tungabhadra & Co. Vs. Government*** reported in AIR 1964 SC 1372. A final order can only be reviewed if there is a patent error which has resulted in gross miscarriage of justice.
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> 12. The order under review does not have any error on its face. If this court misinterpreted the law and arrived at a wrong finding, the order would have to be rectified in appeal by a higher forum."

If the petitioner was aggrieved by any finding of this Court, the remedy of the petitioner lay by way of an appeal to a higher forum. It appears that no appeal was filed against the judgement and order of this Court dismissing the writ petition. The petitioner submits that the judgment and order of this Court, rejecting the review application was ready on 4th March, 2017 and a copy thereof made available to the petitioner on 6th March, 2017. Learned counsel appearing on behalf of the respondent No.1 disputes such contention, saying that the submissions now made are contrary to the submissions made before the Debt Recovery Appellate Tribunal.

It is not necessary for this Court to go into the dispute of when exactly the orders were made available. The fact remains that, by an order dated 20th February, 2017, which is under challenge in this writ petition, the appeal of the petitioner Bank has been dismissed on the ground of non-payment of Rs.2 crores as earlier directed by the Learned Debt Recovery Appellate Tribunal.

It is not for this Court to sit in an appeal over a judgment and order passed by the Appellate Tribunal. Rightly or wrongly, this Court had earlier by its judgment and order dated 13th January, 2017 held, that the learned Tribunal/ appellate Tribunal had inherent power to call upon a bank to make a deposit. The judgment and order has not yet been interfered with by any higher forum. Interference with dismissal of the appeal on the ground of non-compliance of the interim order does not call for interference. The remedy, if any, of the petitioner Bank lies in challenging the order of this Court before the Hon'ble Supreme Court.

The judgements of the Supreme Court in Jayanmti De & Anr. V Abani Kanta Barat & Ors., reported in AIR 2000 SC 3578 and in U.P. Avas Evm Vikas Parishad v. Sheo Narain Kushwaha & Ors. Reported in (2011) 6 SCC 456 were rendered in the context of dismissal of an appeal on merits under Order 41 Rule 11. The Court held that the appeals could be dismissed at the admission stage, but by a speaking order. The judgments are distinguishable. Non compliance of an order, challenge to which has failed, has rightly entailed the consequence of dismissal of the appeal.

The writ petition is dismissed with costs of Rs.20,000/- to be deposited with Delhi High Court Legal Services Committee.

Dasti.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

MARCH 14, 2017/vp