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

+ W.P.(C) 3722/2016 and CM APPL. 15863/2016

SHAILENDER SINGH AND ORS

..... Petitioners

Through: Mr. Nimish Chib and Mr. Ajay Mishra,
Advocates

versus

THE KANGRA COOPERATIVE BANK LTD AND ORS.

..... Respondents

Through: Mr. Rajendra Vats and Mr. Aditya,
Advocates for R-1/Bank.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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11.09.2017

1. The petitioners are aggrieved by an order dated 04.02.2016 passed by the learned DRAT, dismissing an appeal filed by them against the orders dated 13.11.2015 and 13.01.2016 passed by the learned DRT.
2. On 13.11.2015, the Securitisation Application filed by the petitioners was disposed of by the DRT in view of the statement made by the counsel for the petitioners to the effect that his clients were ready to vacate the subject premises along with roof rights within 30 days, they were granted a period of 30 days to vacate the subject premises and hand over possession thereof to the respondent No.1/Bank. Two days short of the expiry of 30 days granted to the petitioners, they moved an application before the learned DRT for seeking recall of the order dated 13.11.2015 stating inter alia that they were never apprised by their counsel of the order dated 13.11.2015 and

nor was the said counsel given any instructions for vacating the subject premises within 30 days. Vide order dated 17.12.2015, the said review application was dismissed by the DRT-III, Delhi.

3. Aggrieved by the said dismissal order, the petitioners had filed an appeal before the learned DRAT, registered as Appeal No.401/2015. Vide order dated 29.12.2015, the learned DRAT dismissed the said appeal in *limine* with the following observations:-

“Submission by the counsel for the appellants is that the counsel appearing to represent the appellants had made this statement without proper instructions and had even made a statement in respect of the property which was not owned by the appellants. As per the counsel, the roof rights of the second floor of the property in question are owned by Mr. Yogender Sharma, who had separately filed another S.A. before the Tribunal below. The counsel would refer to the order dated December 17, 2015 whereby the Tribunal below has granted protection to the said applicant Mr. Yogender Sharma so far as the statement for vacating roof rights of the second floor was concerned as this part of the property was not owned by the appellant. The counsel says that injustice would result if the present order is allowed to stand. The counsel has made an attempt to show me certain documents to indicate the title of the property in question. In my view, the application filed for seeking review of the order was not maintainable on the grounds pleaded. If the counsel has made any statement without proper instructions conveyed to him, the proper course for the appellants was to move an application to withdraw the statement made by the counsel and then seek adjudication on merits. The review has rightly been declined by the Tribunal below as there is no ground to seek review of the order once the counsel for the appellant had made the statement for vacating the property. The plea that statement related to that part of the property which was not owned by the appellant can be a cause of grievance by the owner of that part who had already obtained relief. If indeed, the counsel for the appellant had made this statement for vacating the property, then no case of review is made out. It is for the appellants to adopt appropriate course to approach the Tribunal for withdrawing the

statement or any other mode in case the statement was made without instructions from the appellants. No case for interference in the order under appeal is made out. The appeal is accordingly dismissed in limine.”

4. Faced with the above order, the petitioners again approached the DRT and filed an application praying *inter alia* that the earlier order dated 13.11.2015 be recalled. The said application was however dismissed as not maintainable vide order dated 13.01.2016. Aggrieved by the order dated 13.1.2016, the petitioners again approached the DRAT by filing another appeal, registered as Appeal No.82/2016, which was dismissed by the impugned order dated 04.02.2016, with an observation that the petitioners could not be believed simply on their statement to the effect that their counsel had given an assurance to the DRT to vacate the subject premises, without having any instructions to the said effect.

5. The petitioners have assailed the order dated 04.02.2016 passed by the learned DRAT on the ground that the Tribunal has failed to appreciate that the previous counsel engaged by them had made a statement before the DRT on 13.11.2015, without any instructions or intimation to them; that the merits of the case have not been examined either by the DRAT or the DRT and the petitioners have a bonafide defence, being purchasers of the subject premises without notice and for valid consideration from the owner of the subject premises, namely, Smt. Radha Rani Sharma, who happens to be the wife of the respondent No.2, the principal borrower. The petitioners rely on a registered GPA dated 02.08.2013, executed in their favour by Smt. Radha Rani Sharma as the Power of Attorney holder of Smt. Santosh Sharma in respect of the subject premises. Learned counsel states that Smt. Radha Rani

Sharma had purchased the subject premises by virtue of a registered Sale Deed dated 28.02.2013, executed in her favour by Smt. Santosh Sharma and they claim to be the lawful purchasers of the subject premises, by virtue of a chain of title documents in favour of Smt. Santosh Sharma.

6. Learned counsel for the respondent No.1/Bank disputes the aforesaid submission and states that the petitioners cannot claim any title in the subject premises in view of the judgment of the Supreme Court in the case of Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana and Anr. reported as **2012(1) SCC 656**, wherein it has been held that an immovable property can be legally and lawfully transferred or conveyed only by a registered deed of conveyance and transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' will not convey title and do not amount to a transfer, nor can they be recognised as a valid mode of transfer of an immovable property. He further refers to the handwritten document in hindi at page 205 of the paper book, which is stated to be a copy of the last page of the Sale Deed dated 28.02.2013, allegedly executed by Smt. Santosh Sharma in favour of Smt. Radha Rani Sharma, wherein it has been stated that the original Sale Deed of the subject premises had not been handed over to the petitioners on 25.07.2013.

7. In the above circumstances, we have enquired from learned counsel for the petitioners to explain why the petitioners are not in possession of the original Sale Deed dated 28.02.2013 of the subject premises, when they claim ownership thereof. Learned counsel states that though no specific averment in this regard has been made in the GPA dated 02.08.2013, executed by Smt. Radha Rani Sharma in favour of the petitioners, at the time of registering the said GPA, the original Sale Deed was handed over to his

clients. No reference to the handing over of the Sale Deed is contained in the body of the GPA. Even otherwise, their claim of ownership of the subject premises cannot be recognised in law in view of the fact that the petitioners do not possess any registered deed conveying the same in their favour. That apart, we do not find any illegality or arbitrariness in the impugned order dated 04.02.2016 passed by the learned DRAT, for interference. The petitioners cannot be permitted to wriggle out of the undertaking given on their behalf before the learned DRT for handing over the physical possession of the subject premises to the respondent No.1/Bank within 30 days reckoned from 13.11.2015. Despite giving the said undertaking, in view of several rounds of litigation initiated by them, the petitioners have continued to illegally retain possession of the subject premises, for the past almost two years.

8. The present petition is accordingly dismissed as devoid of merits alongwith the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 11, 2017

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