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

\+ W.P.(C) 2617/2017

MANJU DEVI & ORS ..... Petitioners

Through Mr. Anurag Jain, Advocate

versus

M/S RBL BANK LIMITED & ORS ..... Respondents

Through Ms. Sushmita Banerjee, Advocate for respondent no.1

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

O R D E R

% 23.03.2017

CM No. 11314/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

WP(C) No. 2617/2017 & CM No. 11313/2017 (stay)

In this writ petition, the petitioner has challenged an order dated 21.2.2017 passed by the Debt Recovery Appellate Tribunal, Delhi whereby the order of status-quo passed in favour of the petitioners on 5.12.2016 was vacated on the ground of non-compliance of one of the conditions for imposition of the interim order, of giving an undertaking in terms of the order dated 5.12.2016. The relevant part of the order dated 5.12.2016 is extracted herein below:

> "As far as the grant of interim relief is concerned, subject to each one of the appellants' furnishing an undertaking in the form of affidavits that in case this appeal is dismissed and it is found that the sale transactions being relied upon by them were inoperative or false documents for any reason, they will immediately surrender the possession of the shop in question and the loan amount due from the borrowers shall be recoverable from them also, status quo is ordered to be maintained by the parties in respect of shops in question. This undertaking be furnished by tomorrow.
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> On the next date, the bank shall produce its original loan file, preferably through the official who had sanctioned the loan since today a submission has been made that the concerned bank official had mixed up with respondent no.3 herein by accepting the mortgage of property which never belonged to respondent no.3 at the time when it was offered as mortgage for the repayment of the loan amount."

The petitioners had filed an earlier writ petition being WP(C) No. 11766/2017 in this Court challenging the aforesaid order dated 5.12.2016 of the Debts Recovery Appellate Tribunal, Delhi, passed in Misc. Appeal No.460/2016 under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the Securitisation Act, against an order dated 16.11.2016 passed by the Debts Recovery Tribunal, Delhi, in an application filed by the petitioners under Section 17 of the Securitisation Act.

The Debts Recovery Appellate Tribunal had directed each of the appellants being the writ petitioners to deposit 50% of the amount demanded by the respondent bank from one Mr. Ajay Kumar Gupta, in his capacity as the sole proprietor of Asian Dairy Milk Food Company.

This Court found that the said Mr. Ajay Kumar Gupta being the proprietor of Asian Dairy Milk Food Company had obtained loans from the respondent bank for his proprietory concern. By way of security for the loans advanced by the respondent bank, to his proprietory concern, the said Mr. Ajay Kumar Gupta had mortgaged to the bank his property, being the subject matter of this writ petition.

The petitioners or at least some of them, are apparently in possession of the property. In support of their claim of having purchased portions of the property, the petitioners have relied on Sale Agreements, General Powers of Attorney, Possession Letters, Wills, Affidavits etc. Admittedly, however there is no registered deed of conveyance.

It is well known that there can be no transfer of immovable property exceeding the value of Rs.100, without execution of registered deed of conveyance.

The Respondent bank invoked the provisions of Section 13(4) of the Securitisation Act and attempted to take possession of the property, whereupon the petitioners filed a special application under Section 17 of the Securitisation Act in the Debts Recovery Tribunal - III, Delhi. Initially status-quo was directed to be maintained in respect of the property. The order of status-quo was, however, later vacated by an order dated 16.11.2016 against which the petitioners appealed before the Debts Recovery Appellate Tribunal.

The question involved in the earlier writ petition was, whether the appellants before the Debts Recovery Appellate Tribunal, Delhi, who were neither borrowers, nor guarantors and had not pledged or mortgaged property to the respondent bank, could be called upon to pre deposit a percentage of the loan amount claimed or adjudicated against the borrower for their appeal to be entertained under Section 18 of the Securitisation Act. The aforesaid question was answered in favour of the petitioners. This Court held that a third party who was not a borrower within the meaning of Section 2 (f) of the Securitisation Act could not be called upon to make any pre deposit.

A third party who is neither a borrower nor a guarantor cannot have any liability to pay the dues of the borrower.

The petitioners could legitimately be called upon to give an undertaking to vacate the property, in case they were unsuccessful, as condition precedent for grant of interim relief. However, in our view the petitioners are prima facie not borrowers within the meaning of Section 2(f) of the Securitisation Act. The petitioners had not guaranteed repayment of the loan by the borrower. They had not offered any property by way of security for the loan granted to the borrower. The petitioners could not, therefore have been directed to give an undertaking to pay the dues of the borrower, as a condition precedent for grant of interim protection.

On a subsequent application being CM No. 6891/2017 filed by the petitioners in this Court, for clarification of the order dated 1.2.2017 disposing of the earlier writ petition, this Court observed that any application for further orders should be made before the Appellate Authority and not by way of an application in a writ petition, which had been disposed of. The petitioners accordingly applied before the Tribunal and that application has been disposed of by the order impugned. The prayer for interim relief has not been granted, since the petitioners had not furnished undertakings in terms of the earlier order dated 5.12.2016.

In our considered view, the learned Tribunal ought to have permitted the petitioners to file modified undertakings to vacate the said premises, deleting the direction with regard to the undertaking to pay the dues of the borrower.

The prayer of the petitioner for interim relief shall be considered afresh by the learned Appellate Tribunal, in the light of the observations made above and pending consideration, status-quo shall be maintained, subject to the condition that an undertaking to vacate the property shall immediately be furnished to the Debts Recovery Appellate Tribunal and in any case within a week from date.

The writ petition and pending application are disposed of.

A copy of this order be given *Dasti* under the signature of Court Master.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

MARCH 23, 2017
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