

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 26.10.2017

W.P.(C) 4222/2015

RAJIV KUMAR

..... Petitioner

Through: Mr. Vivek Chib, Advocate with Ms.
Ruchira Goel, Mr. Asif Ahmed, Ms.
Pracheta Kar, Ms. Gayatri Jamwal and
Mr. Vikramaditya, Advocates

versus

STATE BANK OF PATIALA & OTHERS

..... Respondents

Through: Mr. Sanjiv Kakra, Advocate with Ms.
Nistha Gupta, Advocate for R-1
Ms. Pratiti Rungta, Advocate for R-2
Ms. Ruchi Sindhwani, Advocate for
R-3

CORAM:

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA**

SIDDHARTH MRIDUL, J (ORAL)

1. The present appeal assails the order dated 09.02.2015, rendered by the Debt Recovery Appellate Tribunal (hereinafter referred to as 'DRAT') in Misc. Appeal No.387/2014 along with the order dated 11.12.2014, passed by the DRAT in I.A. No.905/2014. The Misc. Appeal No.387/2014 in turn arose out of an order dated 26.09.2014, rendered by the Debt Recovery Tribunal (hereinafter referred to as 'the DRT') in O.A. No.48/2003, whereby

the prayer of the petitioner before us, seeking modification of the restraint order dated 27.01.2014, was declined.

2. The said restraint order dated 27.01.2014 was rendered on an application filed by the State Bank of Patiala, respondent-bank and has the effect of restraining the petitioner from alienating or creating any sort of encumbrances in respect of property – Sanraj Bhawan Kothi No.257 (Municipal No.5832/5-III), Ajit Nagar, Patiala, Punjab (hereinafter referred to as ‘the subject property’).

3. It is an admitted position before us that the petitioner is a guarantor in respect of the loans advanced by the respondent bank to the respondent No.3. The learned DRT in order to secure the assets held by the petitioner as guarantor of the subject loans and in view of an assertion made on behalf of the said Bank that they had executed six sale deeds disposing of the subject property, by way of its said order dated 27.01.2014 enjoined the petitioner from doing so.

4. Aggrieved by the said order dated 27.01.2014, the petitioner instituted an application seeking its modification, predicated on the assertion that in terms of Section 60(1)(ccc) of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘the CPC’), read with Schedule 2 and 3 of the Income Tax Act, 1961, their dwelling house was exempt from attachment as well as sale in recovery of debt and could not be made the subject matter of an interim order to restrain or injunction. It was further the assertion on behalf of the petitioner before us that in view of the circumstance that the subject property had not been mortgaged with the respondent Bank in pursuance to the extension of the loan facility to the principle borrower, no interim injunction could be granted against the petitioner from alienating or creating

encumbrances in respect of the subject property, which was in their occupation.

5. In our view, the learned DRT by way of its order dated 26.09.2014 erroneously came to the conclusion that the decision of the Division Bench of this Court in *Indo Foreign Commercial Agency (Produce) Pvt. Ltd. & Ors. v. Punjab and Sind Bank* reported as 183 (2011) DLT 682, had been over-ruled by the decision of the Hon'ble Supreme Court in *Phoenix ARC Pvt. Ltd. v. B.L. Gupta Construction Pvt. Ltd. & Ors.* bearing SLP No.60/2014 and decided on 18.04.2016, on the ground that it did not lay down the correct law. While striking out this erroneous determination, the DRT relied upon another judgment rendered by the learned DRAT in *Vimoni (India) Pvt. Ltd. & Ors. v. State Bank of India.* bearing Appeal No.86/2014 dated 29.04.2014.

6. In this behalf, it would be relevant to observe that a Division Bench of this Court in *Indo Foreign Commercial Agency (supra)* and in particular paragraph 9 observed as follows:-

“9. Section 19(12) of the DRT Act empowers the DRT to make an interim order whether by way of injunction or stay of attachment against the defendant debarring it from transferring, alienating or otherwise dealing with or disposing of any properties and assets belonging to him without the prior permission of the said Tribunal. It is obvious that this power of making an interim order which the Tribunal possesses will have to be read with the provisions of Section 29 of the DRT Act, which, in turn, would have to be read with provisions of Rule 10 of the second Schedule of the Income Tax Act, 1961 and Clause (ccc) of the proviso to Section 60(1) of the Code of Civil Procedure, 1908. We are in agreement with the submission made by Mr. Kaul that what cannot be done at the stage of execution of a decree or recovery of debt after the debt is determined cannot also be done at the interim stage. Since the main residential house,

which is occupied by a debtor, is exempt from attachment and sale in recovery of a debt, which has been finally determined by the Tribunal, it cannot also be made the subject matter of an interim order by way of restraint or injunction. Therefore, the reference to properties and assets in Section 19(12) of the DRT Act would have to be read as meaning only those properties and assets which have not been excluded from attachment or sale under the said provisions of CPC as applicable to Delhi.”

7. The order dated 17.01.2014 of the Hon’ble Supreme Court in *Phoenix ARC Pvt. Ltd. (supra)* reads as follows:-

“ Two Fold submission has been made by Mr. Ranjit Kumar, learned senior counsel for the petitioner (i) the High Court in the impugned order has relied upon a decision of that Court in *Indo Foreign Commercial Agency (Produce) Pvt. Ltd. vs. Punjab & sind Bank (W.P.(C) No.12640 of 2009)* decided on 2805.2010 but that judgment, particularly para 9, does not lay down correct law and that requires consideration by this Court and (ii) the High Court has made certain observations which in the impugned order enables the respondent No.2 to dispose of the subject property and, thus, the order is not on parity even with the relied upon judgment.

Issue notice returnable in eight weeks.

Dasti, in addition to the ordinary process.

In the meantime, status-quo with regard to the subject property shall be maintained by all concerned.”

8. A plain reading of the above extracted paragraphs clearly reveal that the decision in *Indo Foreign Commercial Agency (supra)* has not been either over-ruled or set aside by the Hon’ble Supreme Court in *Phoenix ARC Pvt. Ltd. (supra)*, as erroneously determined by the learned DRT.

9. As a matter of fact, the inference of the DRT was predicated on the submissions made by the learned Senior Counsel on behalf of Phoenix ARC Pvt. Ltd., as recorded by the Hon’ble Supreme Court in the said order dated 17.01.2014, and the ratio of the decision in *Indo Foreign Commercial*

Agency (supra) was not in any manner reversed. In any event, we are informed at the Bar that SLP No.60/2014 in *Phoenix ARC Pvt. Ltd. (supra)* has since been disposed off as withdrawn without determining any question of law, leave alone reversing or setting aside the decision of this Court in *Indo Foreign Commercial Agency (supra)*.

10. By way of order impugned in the present writ petition, the learned DRAT dismissed the said Misc. Appeal No.387/2014 and declined to interfere with the said order dated 26.09.2014, rendered by the DRT, restraining the petitioner from alienating or creating encumbrances in respect of the subject property.

11. In view of the foregoing discussion, we have no manner of doubt that both the orders dated 09.02.2015 passed by the learned DRAT, as well as, the order dated 26.09.2014, rendered by the DRT are erroneous and in the teeth of the dictum of law, as laid down by this Court in *Indo Foreign Commercial Agency (supra)*. Consequently, the said orders cannot be sustained and is accordingly set aside and quashed. However, in view of the circumstance that OA No.48/2003 is still pending adjudication before the DRT, we are of the view that the question of fact as to whether the subject property, which is stated to be dwelling house in occupation of the petitioner, must be determined in accordance with law by the said Forum, after permitting the parties to lead evidence in that behalf, in accordance with law.

12. It is directed that the said determination be made expeditiously and preferably within a period of four weeks from today.

13. Mr. Chibb, learned counsel appearing on behalf of the petitioner, however, undertakes on behalf of the latter that during the pendency of the aforesaid adjudication they shall not alienate the subject property, in any

manner whatsoever. The undertaking is accepted.

14. With the above directions, the writ petition is disposed of.

15. In the first instance, the matter be listed before the learned DRT for directions on 03.11.2017.

16. A copy of this order be sent to the DRT and DRAT for necessary information and compliance.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

OCTOBER 26, 2017

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