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

\+ W.P.(C) 9525/2016

BIMLA SHARMA AND ORS ..... Petitioners

Through: Mr. Shekhar Gupta, Advocate with Mr. Gaurav Singh, Advocate

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. Hashmat Nabi, Advocate with Mr. Abhinav Thareja, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON’BLE MR. JUSTICE A.K. CHAWLA

O R D E R

% **16.10.2017**

1. The petitioners herein are aggrieved by the order dated 05.10.2016 passed by the DRAT, dismissing an appeal filed by them (Appeal No.327/2016) against the order dated 17.03.2015 passed by the DRT, whereby their S.A. was dismissed.

2. Initially, vide order dated 02.09.2016, the DRAT had issued notice on the waiver application and the condonation of delay application filed by the petitioners alongwith their appeal, returnable on 20.09.2016. After considering the submissions made by the counsel for the petitioners to the effect that the petitioner No.1 had approached the respondent/Bank for getting education loans sanctioned for her children, the petitioners No.2 and

3, but later on, both the children were not successful in getting jobs, which was the reason for the default in repayment of the loan amount, cognizance was taken of the fact that the respondent/Bank was likely to take over the sole residential premises of the petitioners for non-payment of the loan amount and it was ordered that subject to their depositing the minimum amount of the pre-deposit, as contemplated under Section 18 of the SARFAESI Act, as a pre-condition for entertaining the appeal within 10 days, status quo shall be maintained in respect of the possession of the mortgaged property.

3. Admittedly, the petitioners did not make the deposit within the time granted. Instead, on 20.09.2016, they sought one month's more time for making the deposit, the learned DRAT observed that though there was no justification for granting further time, relaxation of 10 days was granted to the petitioners to make compliances of the order dated 02.09.2016 and the matter was adjourned to 05.10.2016. However, the petitioners remained in non-compliance of the directions of pre-deposit. As a result, the impugned order dated 05.10.2016 came to be passed by the learned DRAT, dismissing their appeal.

4. Aggrieved by the said order, the petitioners filed the present petition in October, 2016, on which notice was issued to the respondent and it was simultaneously directed that subject to the petitioners depositing a sum of Rs.10 lakhs with the Registrar General on or before 18.10.2016, there will be status quo in respect of the property in question for a period of six weeks or until further orders, whichever is earlier. Admittedly, the petitioners did

not make compliance by depositing the sum of Rs.10 lakhs in the Registry. Instead, they filed an application for seeking extension of time (CM APPL. 4732/2017), which was dismissed vide order dated 06.02.2017. Thereafter, the petitioners filed an application for seeking modification of the order dated 06.02.2017 passed in CM APPL. 4732/2017 (CM APPL. 7016/2017), which was allowed vide order dated 14.03.2017 and it was directed that subject to their depositing a sum of Rs.10 lakhs with the Registry within the closing hours of 18.03.2017, the stay order dated 06.02.2017 passed in their favour earlier, shall continue to operate.

5. Again, the petitioners defaulted by failing to deposit the aforesaid amount within the stipulated timeline. In April, 2017, the petitioners filed a fresh application asking for stay (CM APPL. 38093/2016), which came to be dismissed vide order dated 18.04.2017 in view of non-deposit of the amount as directed earlier. Within one month therefrom, the petitioners filed yet another application for seeking recall of the order dated 18.04.2017, passed in CM APPL. 36093/2017 (CM APPL. 21555/2017) stating inter alia that they had brought the demand draft of Rs.10 lakhs drawn in favour of the Registrar General. However, when the application was taken up on 30.05.2017, counsel for the petitioners had stated that his clients were still at the Bank getting the demand draft prepared. At his request, the matter was adjourned to 31.05.2017. On 31.05.2017, counsel for the petitioners informed the Court that the petitioners were unable to arrange the funds for preparing the demand draft of Rs.10 lakhs. As a result, CM APPL. 21555/2017 was dismissed.

6. Within two days thereafter, the petitioners approached the Vacation Bench for permission to deposit the demand draft of Rs.10 lakhs and for condonation of delay. Vide order dated 02.06.2017, the Vacation Bench granted indulgence to the petitioners and permitted them to hand over the demand draft of Rs.10 lakhs in court. The respondent/Bank was directed to maintain status quo with regard to the subject property, situated in District Shimla, Himachal Pradesh.

7. Learned counsel for the petitioners states today that the amount of Rs.10 lakhs has been deposited by the petitioners in this court and the said amount exceeds the minimum amount of 25% that they were required to deposit as a conditional deposit for entertaining the appeal filed before the DRAT. The aforesaid fact is confirmed by learned counsel for the respondent/Bank, who states that the notice issued by the Bank under Section 13(2) of the SARFAESI Act had quantified the amount payable by the petitioners as Rs.36 lakhs (approximately).

8. In view of the aforesaid sequence of events and noting that the petitioners have finally made a deposit of Rs.10 lakhs, which is lying in a FDR in the Registry, the order dated 05.10.2016 passed by the learned DRAT is quashed and set aside. Appeal No. 327/2016 filed by the petitioners before the DRAT is restored to its original position. The parties shall appear before the learned DRAT on 15.11.2017, for further proceedings in the appeal on merits.

9. The amount deposited by the petitioners herein shall be retained by the Registry, subject to the final outcome of the appeal filed by them before the DRAT. The interim orders passed in the present petition in respect of the

subject property shall continue to operate in favour of the petitioners, till appropriate orders are passed by the DRAT on the stay application accompanying the main appeal. Needless to state that the respondent/Bank is at liberty to take all the pleas that may be available to it, both on facts and in law, before the DRAT to seek vacation of the interim order.

10. The petition is disposed of.

HIMA KOHLI, J

A.K. CHAWLA, J

OCTOBER 16, 2017
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