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

+ W.P.(C) 5237/2017

GOPAL SINGH HANOT

..... Petitioner

Through Mr. R.S.Rathi with Ms. Kusum,
Advocates

versus

UCO BANK & ORS

..... Respondent

Through Mr. Sarfaraz Khan with Mr. Ataur
Rahman, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

O R D E R

% **05.06.2017**

CM No. 22241/2017 (exemption)

Exemption allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 5237/2017 & CM No. 22240/2017 (stay)

1. Challenge in this writ petition is to the order dated 29.05.2017 passed by the Debt Recovery Appellate Tribunal. The petitioner also challenges the order dated 24.05.2017 passed by the Debt Recovery Tribunal-III.

2. It is pointed out by counsel for the petitioner that the petitioner is not a party in the proceedings pending before Debt Recovery Tribunal which has been instituted by the respondent no.1 bank against respondent nos. 2 & 3.

3. The counsel for the petitioner submits that in the year 2013, the petitioner had filed the suit for partition, being CS (OS) 2270/2013 in the Delhi High Court. While issuing summons in the suit, an order of Status quo was passed on 21.11.2013 with respect to the joint property, which the respondent nos. 2 & 3 have allegedly mortgaged with the bank. This order was confirmed, on 06.05.2014 on an appeal filed in FAO (OS) 76/2016 it was clarified that orders dated 21.11.2013 and 06.05.2014, which were operating in respect of respondent no.1 would apply to defendant nos. 2 & 3 as well. The appeal was disposed of on 03.05.2016 confirming the aforesaid orders.

4. Counsel for petitioner submits that when the sale proclamation notice was affixed on the suit property on 18.05.2017, did the petitioner come to know that the suit property has been illegally mortgaged by the respondent nos. 2 & 3 herein based on forged and fabricated documents. The petitioner then made an application before the Recovery Officer, Debt Recovery Tribunal which application was dismissed by an order dated 13.02.2017. Counsel for the petitioner submits that despite it being brought to the notice of the Debt Recovery Tribunal-III, on an appeal filed the Presiding Officer, while issuing notice in the application, adjourned the matter to 05.07.2017, a date post the date fixed for e-auction. Counsel submits that order passed by Debt Recovery Tribunal is devoid of any reason. He submits that in an appeal filed against the aforesaid order before the Debt Recovery Appellate Tribunal, notice has been issued but no ex-parte relief has been granted.

Counsel submits that in case the auction is carried out, not only would it lead to multiplicity of proceedings but the auction would be against the order of status quo passed by the Single Judge of this court and confirmed by the Division Bench. Counsel submits that the action of recovery officer, presiding officer would virtually amount to contempt of the orders passed by the Delhi High Court.

5. Notice to show cause as to why the petition be not admitted.

6. Counsel for the bank enters appearance. He submits that date of auction is fixed for 09.06.2017. The Debt Recovery Appellate Tribunal has fixed a date for 07.06.2017. It is contended that bank would appear on 07.06.2017 & not seek an adjournment on 07.06.2017.

7. Heard. Since the DRAT has filed the appeal for hearing on 07.06.2017 in our view no further orders are required to be passed, but we are constrained to note that the DRT on an application filed by the petitioner herein against the order of the R.O. has posted the matter on a date post the e-auction, with no reasons as to why the stay has been declined. We are rather shocked in the manner the order has been passed especially when the petitioner herein is not a borrower and stay order has been granted by a Single Judge and Division Bench of this court. To issue notice post the e-auction would render the proceeding redundant.

8. We may note that the Debt Recovery Appellate Tribunal has issued notice for 07.06.2017. We direct the bank to appear before Debt Recovery Appellate Tribunal on 07.06.2017.

9. We have no hesitation in saying that the Debt Recovery Appellate Tribunal would hear the stay application of the petitioner prior to the auction. Counsel for the petitioner submits that if for any reason this

application is dismissed and in view of the holidays in the Delhi High Court, it may be impossible for him to seek further relief.

10. At this stage, we can not predict the order likely to be passed by the Debt Recovery Appellate Tribunal, however we grant liberty to the petitioner to apprise the Debt Recovery Appellate Tribunal, during the course of hearing as it is pointed out that the petitioner is a IV-Class employee and it is the only residential house where he along his family resides comprises of his wife and children.

11. The writ petition and pending application are disposed of.

12. Copy of this order be given dasti under the signatures of the Court Master/Private Secretary.

G.S.SISTANI, J.
(VACATION JUDGE)

VINOD GOEL, J.
(VACATION JUDGE)

JUNE 05, 2017/cd