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

\+ W.P.(C) 5251/2017

KALPANA SINGH ..... Petitioner

Through: Ms. Maneesha Dhir, Advocate with Ms. Jayashree Shukhla, Ms. Swati Sharma and Mr. Sidhant Virmani, Advs.

versus

ICICI BANK LTD. ..... Respondent

Through: Mr. Sanjiv Kakra, Adv. with Mr.Vipin Bhasker, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

O R D E R

% **07.06.2017**

C.M.Appl. No.22295/2017 (exemption)

Exemption allowed subject to all just exceptions.

Application is disposed of.

C.M.Appl.No.22296/2017 (exemption from filing DRT records)

Exemption allowed subject to all just exceptions.

Application is disposed of.

W.P.(C) 5251/2017 & C.M.Appl. No.22294/2017 (Stay)

This writ petition is listed upon mentioning.

The petitioner is aggrieved by an order dated 05.06.2017 passed by the Debts Recovery Appellate Tribunal.

Learned counsel for petitioner submits that the respondent bank has filed an OA for recovery of Rs. 55 crores against the principal borrowers and the guarantors. It is further pointed out that the petitioner is a guarantor to the tune of Rs.3.12 crores.

Learned counsel for the petitioner submits that the learned Debts Recovery Appellate Tribunal has without issuing notice to the petitioner stayed the order passed by the Debts Recovery Tribunal dated 17.08.2016.

Ms. Dhir, learned counsel for the petitioner points out that while issuing notice in the OA, detailed interim orders were passed on 17.08.2016. Attention of the Court is drawn to the paras 4, 8, 9, 10 and 11 which are reproduced below to show that the bank is fully protected to the last penny which it had lent:-

> *"...4. Defendants no. 1 and 5 their men or agents are restrained from selling, disposing or creating any sort of encumbrance in respect of all hypothecated assets including present and future boo debts receivables including documentary bills, stocks, buses and all movables etc. lying in the premises of defendant no.1 at Logistic Screening Centre Gate No.1, Millennium Depot Opp. Indraprastha Park, New Delhi-110001, belonging to defendant no.1 and premises situated at A-1, Surajpur Industrial Area, Noida, Dadri Road Gautam Budh Nagar, Distt. Surajpur-203207, U.P. belonging to defendant no.5 until further orders.*
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> *8.Defendants no.1 to 5 their men or agents are restrained from alienating or creating any sort of encumbrance in respect of their immovable and movable properties until further orders.*
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> *9.Defendants no.2 and 3 are restrained from leaving the*

country without prior permission of this Tribunal.

10. .Defendant no.2 is restrained from selling, alienating or encumbering his equity share holding in Spice Jet Ltd. 319 Udyog Vihar, Phase-IV, Gurgaon to the extent of the amount claimed in this OA, until further orders.

11. The Department of Transport, New Delhi (Dot/Delhi) Intergrated Multi-Model Transit System Ltd., First Floor, Maharana Pratap ISBT Building Kashmere Gate, Delhi-110006 is directed that as and when any amounts or any other receivables become due and payable to the defendant no.1 by them they must deposit the same in the account no00705035626 of defendant no.1 with the applicant bank, until further orders."

Learned counsel submits that the present petitioner (guarantor) had approached the Presiding Officer, Debts Recovery Tribunal by filing an application seeking an order of restraint against the bank from taking physical possession of the commercial offices of the petitioner herein (guarantor) bearing number DTJ-918, 9th Floor, Tower-B, DLF, Plot 11, Jasola, New Delhi.

Learned counsel submits that by a detailed order (running into seven pages) and taking into considering various decisions of the Supreme Court in the cases of ***Harshad Goveardhan Sondagar Vs. International Assets Reconstruction Company Limited and others (2014) 6 SCC 1; Anthony Vs. K.C. Ittoop & Sons and others (2000) 6, SCC 394 and Vishal n. Kalsaria Vs. Bank of India and others (2016) 3, SCC, 762***, the PO, DRT granted a stay against the bank from taking physical possession of the property in question.

The complaint of the petitioner is that in an appeal filed by the bank before the Debts Recovery Appellate Tribunal in a short order dated 05.06.2017, without granting the petitioner an opportunity to file reply or opportunity of hearing, stayed the operation of the impugned order of the Debts Recovery Tribunal.

Learned counsel for the petitioner further submits that the effect of the order dated 05.06.2017 would amount to allowing the appeal of the bank without granting an opportunity of hearing to the petitioner. It is further contended that in case the order of 05.06.2017 is not set aside serious prejudice would be caused to the rights of the petitioner as the bank would take possession of the property in question.

Mr. Kakra, learned counsel appearing for the respondent bank enters appearance on an advance copy having been served. He submits that the property in question is not a tenanted premises and the petitioner not entitled to protection under Section 17 (4) (A) of the SARFAESI Act, 2002**.** He further submits that the judgments sought to be relied upon by the counsel for the petitioner are not applicable to the facts of the present case. He also submits that the interest of the bank is not fully protected by the interim order granted by the DRT dated 17.08.2016.

We have heard learned counsel for the parties.

In this case, the bank has filed an OA for the recovery of Rs.55 crores against the principle borrower and the guarantor. The petitioner is a guarantor to the tune of Rs.3.12 crores.

Reading of the interim order passed on 17.08.2016 would, *prima facie*, shows that various directions have been issued to protect the rights of the respondent bank.

It may also be noticed that the petitioner herein had filed an application before the Presiding Officer, Debts Recovery Tribunal seeking an order of restraint against the bank from taking possession of the property in question. This order was passed after notice was issued to the bank and after hearing counsel for the petitioner and the bank.

Aggrieved by the order passed by Presiding Officer, Debts Recovery Tribunal, the bank has filed an appeal before the Debts Recovery Appellate Tribunal. It is not in dispute that Debts Recovery Appellate Tribunal has stayed the operation of the order dated 01.05.2017 passed by the Debts Recovery Tribunal without granting opportunity of filing reply and without granting an opportunity of hearing.

We find force in the submission of Ms. Dhir, learned counsel for the petitioner that in case the order of the Debts Recovery Appellate Tribunal dated 05.06.2017 is not set aside, the petitioner would suffer serious consequences.

The impugned order does not reflect any reason to show why the order of the Debts Recovery Tribunal has been stayed without granting the petitioner an opportunity of hearing.

Resultantly, we set aside the order of the Debts Recovery Appellate Tribunal dated 05.06.2017.

Let a copy of the appeal be served upon the petitioner.

Reply be filed within four weeks. Rejoinder thereto within two weeks thereafter.

Upon completion of pleadings, we request the Debts Recovery Appellate Tribunal to hear the matter after affording an opportunity of hearing to the petitioner.

Writ petition and applications are disposed of.

Dasti under the signatures of Court Master/PS.

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

VINOD GOEL, J.
(VACATION JUDGE)

JUNE 07, 2017
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