

\$~4

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

+ **W.P.(C) 5376/2017 & C.M.Nos.22712-22713/2017**

SAROJ BALA

..... Petitioner

Through Ms.Reena Jain Malhotra, Advocate.

versus

PUNJAB NATIONAL BANK AND ORS

..... Respondents

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **28.06.2017**

1. Present writ petition has been filed challenging the order dated 10th November, 2016 passed by Debt Recovery Appellate Tribunal (DRAT) in Misc. Appeal No. 362/2015, whereby the appeal against the order dated 20th November, 2015 passed by DRT-III preferred by the petitioner was dismissed. Petitioner also seeks setting aside/modification of the order dated 20th November, 2015 passed by DRT-III.

2. It is stated in the petition that respondent no. 2-company is in the business of metal trading and on 30th January, 2012 the respondent no. 1-Bank after considering the request of respondent nos. 2 and 3 sanctioned financial facilities of a total sum of Rs.370 lakhs to the respondent no. 2-company which, however, was reduced to Rs.270 lakhs on 22nd August, 2013.

3. It is further stated in the petition that since the borrower failed to

repay the loan amount, the respondent no. 1-bank initiated steps for recovery against the borrower as well as the petitioner/guarantor/mortgager as provided under Sections 13 and 14 of SARFAESI Act pursuant to which the petitioner filed a petition under Section 17 of the SARFAESI Act against the respondent no. 1-bank.

4. It is stated that subsequent to filing of the said petition, the parties arrived at a one-time settlement (OTS) vide letter dated 25th April, 2015.

5. However, since respondent no. 1 failed to comply with the terms of the said settlement, the petitioner approached DRT-III with a petition under Section 17 of the SARFAESI Act which was disposed of vide order dated 20th November, 2015. Aggrieved by the said order, the petitioner had preferred an appeal which has been dismissed by the impugned order.

6. Learned counsel for the petitioner states that the petitioner and respondent no.3 are not mother and son as erroneously presumed by the DRAT.

7. She further states that the respondent no. 1-bank has failed to comply with the terms of the settlement whereby the respondent no. 1-bank had agreed to release the property of the petitioner on deposit of Rs.102 lakhs within a period of seven days from the date of receipt of letter dated 25th April, 2015. She also states that the DRAT failed to consider and appreciate that upon deposit of Rs.102 lakhs by the petitioner with the respondent no. 1-bank, the property of the petitioner with respect to the loan stood released and discharged.

8. Though learned counsel for the petitioner admits that respondent no.3 has sold another property which had been mortgaged in favour of the bank without any permission of the bank, yet she submits that the

rights and interest of the respondent-bank have not been impaired inasmuch as the mortgage deed is still legal and valid.

9. Having heard the learned counsel for the petitioner and having perused the paper books, this Court is of the opinion that the petitioner cannot pick and choose one clause of the OTS. Admittedly, the OTS was not abided by the petitioner in its entirety inasmuch as a further sum of Rs.188 lakhs was not paid by the petitioner within three months. Clause 6 of the OTS clearly stipulated that “Default in payment of one instalment shall render the OTS as failed and all reliefs and concessions shall lapse automatically and bank will be entitled to recover the entire dues as per suit filed.” Consequently, the relief of release of Kucha Mahajani Chandni Chowk property stands withdrawn/lapsed.

10. Even if the petitioner and respondent no.3 are not mother and son, yet they are related. Further, as the factum of sale of the second mortgaged property of the respondent-bank is not disputed, this Court is of the view that the petitioner cannot invoke the high prerogative writ jurisdiction as the said jurisdiction is available to only those who approach the Court with clean hands. Accordingly, the present writ petition being bereft of merits is dismissed.

MANMOHAN, J
(Vacation Judge)

YOGESH KHANNA, J
(Vacation Judge)

JUNE 28, 2017
KA