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

+ **W.P.(C) 6404/2017 and CMs 26503-04/2017**

SUSHMA JAIN & ORS Petitioners

Through : Mr. Parvinder Singh with
Ms. Supreet Kaur, Advocates

versus

CANARA BANK Respondent

Through : Mr. Sanjay Aggarwal, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **28.07.2017**

1. The present petition has been filed by the petitioners praying *inter alia* for quashing/setting aside the order dated 6.6.2017 passed by the learned Debts Recovery Appellate Tribunal (DRAT), whereby their appeal was dismissed for non-compliance of the condition of pre-deposit of 50% of the amount of debt found to be due and recoverable from them under a Recovery Certificate dated 22.9.2015 issued for a sum of Rs.21,03,737.72/-.
2. The records reveal that objections were filed by the petitioner No.1 to the effect that as premises No.A-20/1, Rana Pratap Bagh, Delhi attached by the Recovery Officer is her sole residential premises where she is residing along with her family members, she is entitled to the protection provided under Section 60(ccc) of CPC. The said objections were duly responded to by the respondent/Bank that denied the submission that the petitioner No.1

is residing in the entire premises that comprises of a stilt area for car parking, ground floor, upper ground floor, first floor, second floor and the roof above the second floor. It was asserted that the said premises has been let out.

3. Taking note of the fact that on 15.9.2016, it was stated on behalf of the petitioner No.2/firm that the first floor has been let out and at that point in time, the second floor was under construction, vide order dated 31.1.2017 the Recovery Officer had granted protection to the petitioners in respect of the ground floor and the upper ground floor where they were stated to be residing and directed that the amounts due be recovered from the attachment and sale of the first floor and the second floor.

4. Thereafter, on 28.2.2017, learned counsel for the respondent/Bank had sought time to file a valuation report in respect of the first floor and second floor of the attached property. The Bank also filed an affidavit stating *inter alia* that there are two other parcels of land that had been mortgaged by the petitioners. The said properties were directed to be attached and the petitioners were restrained from selling the same.

5. Aggrieved by the aforesaid order, the petitioners filed an appeal before the Debt Recovery Tribunal-III, Delhi (DRT-III). In view of failure on their part to make pre-deposit of 50% of the amount of the Recovery Certificate, the application filed by the petitioners was dismissed, vide order dated 26.4.2017.

6. The order dated 26.4.2017 passed by the Presiding Officer, DRT-III, was challenged by the petitioners before the DRAT. The said appeal also came to be dismissed by the impugned order dated 6.6.2017 with an observation that the Tribunal cannot ignore the mandatory condition of pre-

deposit before entertaining an appeal under Section 30 of the RDDBFI Act.

7. Learned counsel for the petitioners submits that the respondent No.1/ Bank be called upon to first dispose of the three parcels of land that the petitioners have mortgaged apart from their personal movable and immovable assets, before proceeding against their sole residential premises.

8. Counsel for the respondent/Bank, who appears on advance copy, opposes the present petition and states that, the petitioners have not paid even a penny in respect of a loan obtained by them towards cash credit limit, which had by now mounted to over Rs.21.00 lacs. As a result, the accounts of the petitioners No.2 and 3 were declared as NPA in the year 2004. He states that the three parcels of land referred to by the petitioners are all disputed properties on which third parties have laid a claim and they have only been identified but not demarcated so far. He states that stiff resistance was put up by the petitioners and third parties working in tandem with them at the time of identifying the said parcels of land. In these circumstances, the respondent/Bank was left with no option to approach the Recovery Officer for attachment of the residential premises at Rana Pratap Bagh, Delhi for purposes of auctioning the same.

9. No ground has been made out by the petitioners for interference in the impugned order. Even if the premises in question is stated to be the sole residential premises of the petitioner No.1, the Recovery Officer has only directed sale of the first floor, second floor and the roof above the second floor, while for the present, permitting the petitioners to retain the ground and the upper floors where they are residing.

10. The writ petition is accordingly dismissed as devoid of merits, along with the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 28, 2017
sk/sr

