

\$~21

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

+ **W.P.(C) 6209/2017 & CM No. 25802/2017**

BANK OF BARODA

..... Petitioner

Through: Mr. Arun Aggarwal, Advocate.

versus

M/S DIMPI S CREATIONS AND ORS

..... Respondents

Through: Mr. Shailendra Ojha, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

24.07.2017

%

Cav 661/2017

Since the caveator has put in appearance, the Caveat is discharged.

W.P.(C) 6209/2017 & CM No. 25802/2017

1. The petitioner/bank is aggrieved by an order dated 18.05.2017 passed by the DRAT on an application filed by the respondents seeking review of the order dated 12.01.2015, directing release of Rs. 20.12 lakhs, pre-deposited by them along with the interest.
2. Under the impugned order dated 18.05.2017, while keeping the applications filed by the respondents pending, the DRAT had directed the petitioner/bank to re-deposit the sum of Rs. 20.12 lakhs released in its favour in terms of an earlier order dated 12.01.2015 (Annexure P-6) and the matter was adjourned to 20.07.2017.

3. Learned counsel for the petitioner states that the applications filed by the respondents have been adjourned to 31.07.2017, with a direction that in the event of failure on the part of the Bank to comply, the General Manager of Delhi area of the Bank shall personally appear on the next date to show cause as to why appropriate orders be not passed for non-compliance.
4. Learned counsel for the petitioner submits that the respondents had filed an appeal before the DRAT against the order dated 05.07.2012, passed by the DRT holding the Bank as entitled to recover a sum of Rs. 80,48,468/- with interest from the respondent. Further, liberty was granted to the petitioner/Bank to recover the debt by sale of the mortgaged property. Vide order dated 15.09.2014, the said appeal preferred by the respondents was dismissed by the DRAT.
5. Aggrieved by the aforesaid order, the respondents had filed a writ petition in the High Court registered as W.P.(C) No. 412/2015. In the meantime, the petitioner/Bank filed an application before the DRAT for release of a sum of Rs. 20.12 lacs deposited by the respondents to meet the requirements of pre-deposit, as mandated under the statute.
6. Vide order dated 12.01.2015, the said application was allowed and the money deposited by the respondent with the DRAT was directed to be released in favour of the petitioner/Bank along with the interest. Subsequently vide judgment dated 03.02.2017, the writ petition filed by the respondents against the judgment dated 15.09.2014 passed by the DRAT, was dismissed on merits. Admittedly, the respondents have not challenged the said decision by filing an SLP. As a result, the decision of the DRT dated 05.07.2012, has attained finality.
7. Learned counsel for the petitioner/Bank states that relying on a

judgment rendered by the Supreme Court in the case of *Axis Bank vs. SBS Organics Private Limited & Anr.*, SLP (C) No. 13861/2015 on 22.04.2016, the respondents have approached the DRAT for seeking release of the pre-deposit made for entertaining this appeal, that was subsequently dismissed. Besides, the respondents have also filed an application for seeking review of the order dated 12.01.2015 passed by the DRAT. It is contended that the captioned decision is distinguishable and the Bank is ready to address arguments on this aspect before the DRAT.

8. Having regard to the fact that the said applications have yet to be adjudicated upon on merits, we see no reason for calling upon the petitioner/Bank at this stage, to deposit the amounts released in its favour with interest as long back as on 12.01.2015 and make it a pre-condition for hearing the review application and the accompany application filed by the respondents. In the event, the respondents succeed before the DRAT, the petitioner/Bank can be called upon to deposit the amounts released in its favour. But not at this stage.

9. Accordingly, the presence of the General Manager of the Delhi area of the petitioner/Bank is dispensed with before the DRAT on 31.07.2017. Instead, the learned DRAT is requested to hear the parties and decide the review application and the miscellaneous application filed by the respondents on merits.

10. The present petition is disposed of along with the pending application.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 24, 2017/ss