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

+ FAO(OS) 233/2017 & CM No.29608/2017

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Date of decision : 22nd August, 2017

GOPAL SINGH HANOT

..... Appellant

Through : Mr. R.S. Rathi, Adv.

versus

VIJAY SINGH HANOT & ORS

..... Respondents

Through : None

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. In a suit for partition filed by the appellant herein being CS(OS) No. 2270/2013 against his brother Vijay Singh Hanot and his relatives Dev Kumar Meena and Smt. Meena Devi and an application being IA No. 6922/2017 was filed by the present appellant under Order I Rule 10 of the CPC praying for impleadment of the UCO Bank.

2. The primary ground of challenge by learned counsel for the appellant is that this application was first listed on 31st May, 2017 before the Joint Registrar (Judicial) who had directed notice of the application to the proposed defendant and another defendants returnable for 29th August, 2017. Learned counsel would contend that

therefore on 26th July, 2017 when the impugned order was passed, the learned Single Judge had no jurisdiction to pass any orders on this application in as much as the application was not even listed before the court.

3. On record before us are other orders which have been passed in the matter. It appears that with regard to the suit property, the UCO Bank is claiming a mortgage by the owners in its favour against financial facility granted by it. The present appellant had earlier filed an application being IA No. 6582/2017 under Order 39 Rule 1 & 2 of the CPC challenging the action taken by the UCO Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act hereafter). This application was rejected by the learned Single Judge by an order dated 26th May, 2017, inter alia holding that the plaintiff's statutory appeal stood rejected and that in the partition suit, it was not open to the appellant (plaintiff therein) to challenge the action taken by the Bank under the SARFAESI Act.

4. This order of the learned Single Judge was upheld by this Bench on 30th May, 2017 when we had dismissed FAO(OS) 181/2017 filed by the appellant noting that the order of the learned Single Judge was in consonance with the principles laid down by the Supreme Court in the judgment reported at 2014 1 SCC 479 Jagdish Singh v. Heeralal & Ors.

5. It appears that so far as the proceedings under the SARFAESI Act are concerned, aggrieved by the order dated 29th May, 2017 passed by the Debt Recovery Appellate Tribunal the dismissal of the

appellant's statutory appeal, the appellant filed W.P.(C) 5237/2017 which was disposed of by an order dated 5th June, 2017 observing that the matter was listed before the Debt Recovery Appellate Tribunal on 7th June, 2017 and that the Appellate Tribunal would hear the application for the stay filed by the appellant.

6. In view of the observations made by the learned Single Judge on 26th May, 2017 and by this court while dismissing the appeal on 30th May, 2017, certainly the UCO Bank was neither a necessary nor a proper party so far as the suit for partition being CS(OS) 2270/2013 is concerned.

7. In this background, IA No. 6922/2017 was clearly misconceived and no notice thereon was even warranted. It appears that oblivious of the above factual position, the Joint Registrar (Judicial) erroneously issued notice on this application on 31st May, 2017.

In view of the above, the order dated 26th July, 2017 which has been primarily challenged on the ground that IA No. 6922/2017 was not listed before the Bench, is unassailable.

8. Inasmuch as there is neither any jurisdictional error nor any legal error on the reasoning contained in the impugned order dated 26th July, 2017, we find no merit in this appeal which is hereby dismissed.

9. We may note that the order dated 5th June, 2017 passed by the Division Bench notes that the appellant is a class IV employee with very limited means. The appellant is fighting for a very small property which is his only residential dwelling. A prayer is made by

learned counsel for the appellant that the costs of Rs.10,000/- imposed on his client by the impugned order dated 26th July, 2017 may be waived. Given the dire pecuniary straits of the appellant, while dismissing the appeal, we accept this prayer and direct waiver of the costs of Rs.10,000/- imposed by the impugned order dated 26th July, 2017.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 22, 2017/kr