

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27.11.2017

W.P.(C) 7507/2017

RENU SONI

..... Petitioner

Versus

STATE BANK OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr.Raghu Tandon, Advocate.

For the Respondents :Mr. S.L. Gupta and Mr. Mithilesh Pal, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition under Article 226 of the Constitution of India seeks a writ or direction in the nature of Certiorari to set aside the impugned judgment and order dated 29th June, 2017, passed by the Debt Recovery Appellate Tribunal in Appeal No. 163 of 2016, titled as “State Bank of India vs. Mrs. Renu Soni & Ors.”, whilst restoring the order dated 12th February, 2016, passed by the learned DRT in S.A. No. 41 of 2013, titled as “Renu Soni vs. State Bank of India & Ors.”.

2. The facts as are necessary for the adjudication of the present petition, are briefly adumbrated as follows:-

- a. Respondent No. 3/Company, who are the principal borrowers acting through its director, Mr. Rakesh Soni (husband of the petitioner), availed cash-credit facilities, term loans and car loans from the respondent No. 1/Bank.
- b. The petitioner stood as guarantor for the loan taken by respondent No. 3/Company and mortgaged the property bearing no. C-8/8576 Vasant Kunj, New Delhi (hereinafter referred as 'subject property') for the said purpose; to underwrite the above facilities/ loans.
- c. The account of respondent No. 3/Company has been declared as a non-performing asset on 18th June, 2012 and a statutory notice under Section 13(2) of the Securitizations and Reconstruction of the Financial Asset and Enforcement of Security Interest Act, 2002 (SARFESAI, 2002) was issued on 21st December, 2012 seeking repayment in the amount of Rs. 23,31,10,298.85/- (Rs. Twenty Three Crores Thirty One Lakhs Ten Thousand Two Hundred Ninety Eight rupees and Eighty Five Paise only).
- d. In response to the said notice dated 21st December, 2012, respondent No. 3/Company addressed a communication dated 15th January, 2013, to the respondent No. 1/Bank, to the effect that it possesses assets worth more than the required amount and requested that possession of the subject property be not taken over since the same is the residential property of the petitioner.
- e. Eventually the petitioner approached the DRT and filed the said S.A. no. 41 of 2013 impugning the said notice dated 21st December, 2012. The DRT vide order dated 18th April, 2013, granted ex-parte injunction in favour of the petitioner and

restrained the respondent No. 1/Bank from taking over the physical possession of the subject property.

- f. Subsequent thereto, the DRT vide order dated 12th February 2016, disposed off the said S.A. no. 41 of 2013 with the following observations:

“Considering the facts and circumstances of the case, prima facie I find no force in the present S.A. and the same is liable to be dismissed. However, considering the fact that applicant is residing in the impugned property alongwith her family members and there are other secured assets available with the Bank to recover its dues, therefore, it is directed that till the other assets of borrowers are disposed off by the bank, the possession of impugned property be not taken over by the bank nor it be sold. In case if the entire dues of the bank are not recovered from the sale of other mortgaged properties, the respondent bank is held entitled to recover the same from the sale of impugned property.

At this stage when the order is pronounced. Ld. Counsel for the respondent bank submits that though the bank has taken the physical possession of other secured assets of the borrower company, however, they are not able to sell the same.

Ld. Counsel for the applicant submits that they have a ready buyer for the property but the respondent bank is not cooperating them and they are not allowing the proposed buyer for inspection of the secured asset. This contention was strongly opposed by the Ld. Counsel for respondent bank who submits that the applicant/borrower has never brought the buyer before the respondent bank. Ld. Counsel for both the parties prayed for appointment of a Receiver for the purpose of facilitating sale of the other properties situated at Punjab. Record reveals that the applicants have already preferred

an SA before DRT-II Chandigarh challenging the SARFAESI Action of the respondent bank qua those properties. Therefore, parties are directed to approach the concerned DRT for the purpose of appointing a Receiver as this Tribunal has no jurisdiction over the said properties.”

- g. A perusal of the above extracted paragraph clearly reflects that although the Presiding Officer at DRT-I Delhi was of the view that *prima facie* the petitioner does not have a case, however, considering the fact that she was a resident of the subject property, it is directed that till the other assets of borrowers are disposed off by the respondent no. 1/Bank, neither the possession of impugned property be taken over nor it be sold.
- h. It was, however, directed that if the entire dues of the respondent no. 1/Bank are not recovered from the sale of the other mortgaged properties, they were entitled to recover the same from the sale of the subject property.
- i. Aggrieved by the said order dated 12th February, 2016, passed by the DRT, the respondent No. 1/ Bank carried the same in appeal to the Debt Recovery Appellate Tribunal, vide said Appeal No. 163 of 2016. The DRAT vide the impugned judgment and order dated 29th June 2017, allowed the appeal by directing as follows:

“Since the DRTs deal with such like matters everyday it cannot be accepted that the Presiding Officer of the concerned DRT in the present case was not aware of this legal position laid down by the Apex Court. In the judicial hierarchy of our country no Court/tribunal can even think of ignoring the law laid down by the highest Court and so the impugned order giving relief to the surety that her property will not be sold till the properties of the

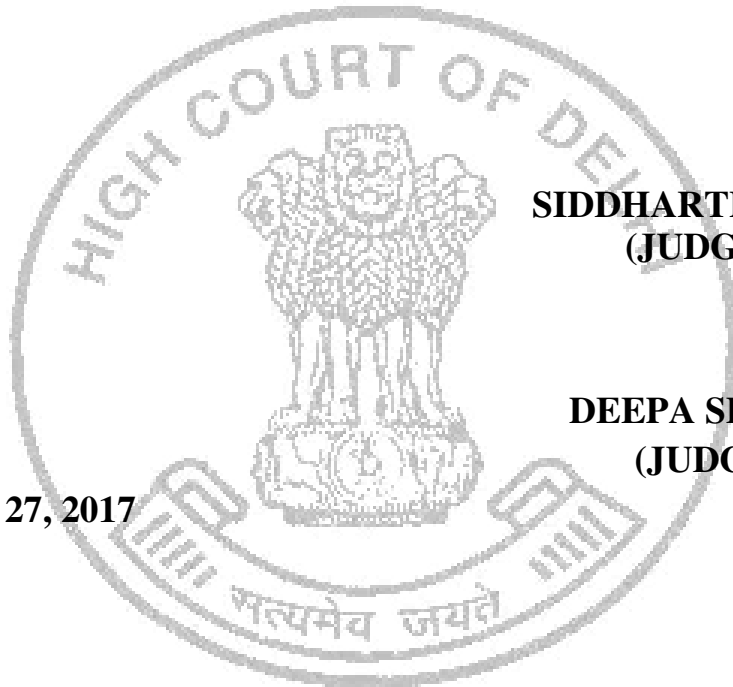
borrower are sold cannot be sustained at all. Therefore, the appeal filed by the appellant Bank against the impugned order of the DRT has to be allowed and is hereby allowed and the direction given by the DRT in the impugned order dated 12th February, 2016 to the Bank not to proceed against the property of the respondent No. 1 (guarantor/mortgagor) till properties of respondent No. 2 (principal borrower) are sold is set aside. Consequently the appellant Bank will now be at liberty to take immediate possession of the property of respondent no. 1 and proceed to sell the same. In case the appellant Bank is unable to take possession of the property in question within ten days due to any resistance by respondent no. 1 it will be at liberty to file an appropriate application before this tribunal for ensuring that this decision of the appellate tribunal is given full effect to/executed and the Bank does not have to run from pillar to post to get that relief since without ensuring that result to the Bank complete justice will not be done.”

- j. In doing so, the learned DRAT placed reliance on the following decisions:
1. *Bank of Bihar Ltd. vs. Damodar Prasad & Anr.*, reported as 1969 SCR (1) 62.
 2. *Industrial Investment Bank of India vs. Bishwanath Jhunjunwala*, being Civil Appeal No. 4613 of 2000 decided on 18th August, 2009.
 3. *Union Bank of India vs. Satyawati Tandon*, reported as (2010)9 SCR1.
- k. In terms of the dictum of the Hon’ble Supreme Court of India in the aforesaid decisions, it was observed that the legal position crystallized is that the liability of the guarantor and principal

debtors are co- extensive and are not in the alternative.

3. Having perused the case record and the impugned judgment and order dated 29th June, 2017, we are in complete agreement with the decision arrived at by the learned DRAT, in keeping with the dictum of the Hon'ble Supreme Court of India.

4. The writ petition is resultantly devoid of merits and is accordingly dismissed.



**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

NOVEMBER 27, 2017
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