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

\+ W.P.(CRL) 1685/2016, Crl.M.A.No.8837/2016, Crl.M.A.No.14285/2016

STATE BANK OF INDIA

..... Petitioner

Through Mr.Rakesh Kumar Khanna, Sr. Adv. with Mr.Anil Kumar Sangal, Mr.Siddharth Sangal and Mr.Abhay Kumar Tayal, Advocates.

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through Ms.Kamna Vohra, ASC for the State.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

<u>O R D E R</u>

% **29.01.2018**

Petitioner seeks a modification in the order passed by the Chief Metropolitan Magistrate dated 18.4.2016 which was an order passed on an application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Court was of the view that since an earlier application under Section 14 of the SARFAESI Act had already been filed by the bank and this had not been disclosed in the subsequent similar application of the bank, the Managing Director of the bank was at fault and accordingly certain strictures had been passed against the Managing Director.

Attention has been drawn to the aforenoted strictures; which are contained in a part of the aforenoted order and relevant would it be to reproduce the same. They are reproduced as under:

"Being a public sector bank, the Court expects State Bank of India to act fairly and not to take any undue advantage of the absence of the respondent. Since notice is not to be issued to the respondent before deciding the application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the Court has to believe the applicant bank, the obligation to state the truth and to disclose full facts is even higher on the applicant bank. The plea that internal probe is being initiated is untenable. As far as the Court is concerned, State Bank of India is a single entity. The Managing Director is responsible for the affairs of a corporate body (Section 2 (51) and (54) of the Companies Act). It may not be appropriate for the Court to embark on an inquiry and look into the internal file notings and communication between one employee and another of State Bank of India. There is no shred of doubt (and has also not been disputed by the Bank) that State Bank of India has concealed the fact that a similar application had earlier been filed before this Court. The Managing Director has yet not filed any affidavit or other written explanation and this responsibility has been shifted to the subordinate employees. From the submissions advanced, there can be only two possibilities. Either the applicant bank was aware of the previous litigation and yet deliberately concealed this fact from the Court, or else, the applicant bank does

not maintain even elementary record of cases filed by it. In either event, this reflects upon the competence and integrity of management of the bank, which calls into question the ability and suitability of the present managerial incumbent. This aspect is beyond the domain of this Court and is within the exclusive arena of Central Government under Sections 20 (1A) and 24 (1) of the State Bank of India Act. Hence, let the facts be brought to the notice of Central Government through its Finance Secretary for examining the above aspects independently and uninfluenced by any observation made in this order. Copy of this order alongwith copy of order dated 18.03.2016 be sent to the Finance Secretary, alongwith copy of the affidavit filed today."

This Court notes the record. The record shows that the State Bank of India had filed an earlier application under Section 14 of the SARFAESI Act; the same was disposed of. Thereafter second application came to be filed by the bank seeking appointment of a Receiver for taking possession of the secured assets of the bank. The Trial Court had noted the fact that an earlier application had already been filed by the bank under Section 14 of the said Act (which had been allowed) and this fact had not been disclosed by the bank; this amounted to an active concealment. This was recorded in the order dated 18.3.2016. An application had thereafter been filed by the Bank seeking modification of the order dated 18.03.2016. It has been brought to the notice of the Trial Court that because of an inadvertent error on the part of the Bank the fact of the filing of the earlier application has not been disclosed. This was wholly a bona fide mistake as this file had been got tagged with another file of the bank; the advocate representing the bank was unaware of the fact. This omission was neither intentional nor deliberate but due to an oversight. An apology had been tendered by the Chief Manager of the bank. Accordingly, a modification in the order dated 18.03.2016 had been sought for.

The Trial Court did not accede to this modification; the impugned order was accordingly passed on 18.4.2016. The application under Section 14 of the SARFAESI Act had been dismissed but the bank was granted liberty to move an application for extension of time for recovery of possession of the secured assets in terms of the original application filed by the Bank. At the same time the aforenoted strictures (extracted supra) had been passed.

This Court is of the view that the strictures passed against the General Manager of the bank are wholly uncalled for. It can nowhere be imputed that the second application filed by the bank through its advocate had not disclosed the filing of the first application for any mala fide or an ulterior purpose; neither is this reflected in the order and nor is it made out from the record of the case. The application filed by the bank seeking modification of the earlier order dated 18.3.2016 had spelt out the reason for non- disclosure of the filing of the first application; it was for the reason that the file of the bank had been got tagged with another file and this being an inadvertent error the omission had been sought to be explained. The apology of the Chief Manager of the bank had also been tendered. The Trial Court ignored this explanation and apology for unexplained reasons.

This is thus a fit case where the remarks passed against the Managing Director of the bank need to be expunged. The Trial Court has gone beyond its jurisdictional limits and in passing the strictures which are nothing short of almost directing a termination of the services of the Managing Director. The aforenoted remarks (extracted supra) are accordingly expunged.

Petition is allowed in the said terms.

INDERMEET KAUR, J

JANUARY 29, 2018
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