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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Decided on: 04.05.2018**
+ **W.P.(C) 3754/2017, CM No. 16540/2017 & CM No. 44940/2017**

SYNDICATE BANKPetitioner

Through: Mr. Adarsh B. Dial, Dr.
Advocate along with Mr.
Yudhishter Sharma,
Advocate.

Versus

M/S SSP TRADEX PRIVATE LTD. & ORS.Respondents

Through: Mr. B.S. Nagar, Advocate
along with Mr. Yogesh
Singh, Advocate for
respondent No. 1.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA

1. Vide this writ petition, the petitioner/ Bank has impugned the order dated 06.04.2017 passed by learned Debt Recovery Appellate Tribunal (hereinafter referred to as "DRAT") in Misc. Application No. 274/2017 in Misc. Appeal No. 439/2016.

2. The facts necessary for the present writ petition are as under:-

M/s Nidhi Builders/borrower had taken loan from the petitioner Bank and also mortgaged the property bearing plot no. 9, Sector 20 at

Dwarka, Delhi (hereinafter referred to as “subject property”). The borrower and the guarantors failed to repay the loan and an OA No. 07/10 was filed by the petitioner Bank against them for the recovery of Rs. 24.17 crores along with interest before Debt Recovery Tribunal-II, Delhi (hereinafter referred to as “DRT-II”). Permission to auction the subject property for the recovery of the defaulted amount was granted by the DRT-II. The reserve price was reduced from Rs. 28 crores to Rs. 17.85 crores. Thereupon, respondent No. 1 offered to purchase the subject property for a sum of Rs. 21.06 crores subject to Bank getting clearance from DRT and vide its letter dated 04.11.2013 offered to make the payment within 60 days and also offered to pay the earnest money of Rs. 2.10 crores upfront. After the permission granted by DRT-II to sell the subject property, respondent No. 1 deposited a sum of Rs. 2 crores as earnest money on 06.11.2013. Vide order dated 11.11.2013, DRT-II directed respondent No. 1 to make the entire balance payment within 60 days from the date of order. Before the expiry of 60 days, respondent No. 1/purchaser received a letter from M/s Ansal Properties & Infrastructure Ltd. (hereinafter referred to as “M/s Ansal”) wherein it was asserted that the latter had pre-existing

rights in the subject property. Respondent No. 1 brought this fact to the notice of the petitioner Bank by writing a letter dated 14.12.2013. Respondent No. 1/purchaser also sought extension of time for making the balance payment by filing an application before DRT-II. Vide order dated 13.01.2014, DRT-II extended the time of payment till 28.02.2014 and on default, ordered the forfeiture of earnest money. Thereupon, respondent No. 1 vide letter dated 24.01.2014 asked for an assurance from the petitioner/Bank that the property was free from any encumbrances and the assurance that he would not have to pay any money to any third party. Respondent No. 1 also wrote to M/s Ansal vide letter dated 07.02.2014 demanding the copy of the orders, if any, of any Court restraining the sale of the subject property. Respondent No. 1 did not deposit the balance amount and filed an affidavit on 27.02.2014 before DRT-II, undertaking to make the balance payment amount only upon the Bank giving an undertaking that the subject property was free from all encumbrances, liens etc. While this affidavit was pending for disposal, the petitioner Bank and the borrower filed an application IA No. 239/14 on 19.03.2014 whereby they sought the cancellation of the permission granted by DRT-II to

sell the subject property to respondent No. 1. DRT-II vide its order dated 21.03.2014, even though the affidavit dated 27.02.2014 of respondent No.1 was on file, withdrew the permission and cancelled the sale of the subject property in favour of respondent no. 1 and also granted liberty to the petitioner Bank to participate in the auction and to bid for the subject property. The petitioner Bank thereafter put the subject property to auction and succeeded in buying the subject property for a sum of Rs. 17.85 crores. Unaware of this development, respondent No. 1 filed an IA No. 268/14 on 01.04.2014 for extension of time by six months for making the balance payment of the amount. On this application of respondent No. 1, notice was issued to the petitioner Bank for 07.05.2014. Respondent No. 1 also filed an IA No. 348/2014 on 05.05.2014 seeking the stay of the order of DRT-II dated 21.03.2014 cancelling the sale of the subject property in it's favour. This application of respondent No. 1 was dismissed by DRT-II vide order dated 22.01.2015. Meanwhile, the petitioner Bank and the borrower filed Joint application before DRT-II for recording their settlement and the DRT-II recorded the settlement as claimed by them and Rs. 2 crores deposited by respondent No. 1 as earnest money,

were also allowed to be adjusted against the loan amount. Respondent No. 1 thereupon filed a Miscellaneous Application against the petitioner Bank seeking refund of Rs. 2 crores which was deposited as earnest money. This application was dismissed by DRT-II vide order dated 02.03.2015. This order was challenged by respondent No. 1 before the Appellate Tribunal vide Appeal No.160/2015 and vide order dated 14.07.2015, the Appellate Tribunal granted liberty to respondent No. 1 to challenge the order dated 13.01.2014 of DRT-II whereby DRT-II had permitted the petitioner Bank to forfeit the amount of Rs. 2 crores, the earnest money paid by respondent No. 1. Thereafter, respondent No. 1 filed an M.A No. 114/2015 in OA No. 7/2010, seeking recall of the order dated 13.01.2014 and refund of sum of Rs. 2 crores with interest. The DRT-II vide its order dated 08.09.2016 directed the petitioner Bank and respondent No. 2/borrower to refund the forfeited amount of Rs. 2 crores along with the interest @ 9% p.a. to respondent No. 1. This order was challenged by the petitioner/Bank vide IA No. 615/2016 in Misc. Appeal No. 439/2016 before DRAT in October 2016.

3. The DRAT listed the appeal for final hearing and while disposing of the stay application of the petitioner Bank issued following directions on 04.01.2017:-

“There is also prayer by the appellant for staying the operation of the impugned direction of the DRT. Subject to the appellant depositing the amount in question with the Registrar of this Court within a week the impugned direction shall stand stayed, failing which the respondent no. 1 will be at liberty to execute the impugned order in accordance with law. In case the bank makes the deposit in the form of the bank draft with the name of Registrar, DRAT, Delhi shall kept in a fixed deposit with any nationalized bank for an initial period of three months which can be extended in case of appeal is not disposed of within three months.”

4. The petitioner Bank had challenged this order in WP(C) No. 296/2017. The writ petition was disposed of by learned Judge vide order dated 13.01.2017:-

“We do not deem it necessary to interfere with the impugned order of the Debt Recovery Appellate Tribunal. The Bank shall comply with the order of the Debt Recovery Appellate Tribunal within a week from date. We, however, direct that in case, any decision is taken by the Debt Recovery Appellate Tribunal to release the amount deposited by the Bank either to the respondent no. 1, M/s SSP Tradex Private Limited or to the Bank, notice of at least 14 days shall be issued to the other party. The registrar of the Debt Recovery Appellate Tribunal shall deposit the amount of Rs. 2 Crores to be deposited by the appellant bank in any

nationalized bank in an interest bearing fixed deposit account which yields the best interest rate.

The writ petition is disposed of accordingly, pending applications, if any, are also disposed of.”

5. The petitioner Bank sought a review of this order which was also dismissed by the Court vide order dated 15.02.2017. The petitioner Bank however did not deposit the amount of Rs. 2 crores with the Registrar of DRAT, even on the dismissal of its review application. The Misc. Appeal No. 439/16 was consequently dismissed by DRAT on 20.02.2017. This order was challenged by the petitioner Bank in WP(C) No. 2372/2017. This Court vide order dated 14.03.2017 dismissed the petition with costs. The Court observed as under:-

“ ...Non compliance of an order, challenge to which has failed, has rightly entailed the consequent of dismissal of the appeal.

The writ petition is dismissed with costs of Rs. 20,000/- to be deposited with Delhi High Court Legal Services Committee.”

6. Thereupon, the petitioner/Bank filed an another application in MA No. 439/2016 on 30.03.2017 before DRAT, offering to deposit Rs. 2 crores and sought the restoration of its appeal. Vide order dated

06.04.2017, learned DRAT dismissed this application with costs of Rs.

50,000/- and observed as under:-

“Misc. A. No. 274/2017

This application of appellant is an abuse of process of court in as much as during the pendency of banks appeal this Tribunal had passed an order on 4.1.2017 directing the appellant bank to deposit the amount in dispute with the Registrar of this Tribunal. The DRT had directed the bank to return to the purchaser of the mortgaged property by way of a private treaty because of his failure to make the full sale amount. This condition was imposed upon the appellant bank by this Tribunal while staying the operation of the impugned direction of the DRT. The appellant bank challenged that order of this Tribunal before the Hon'ble Delhi High Court by filing writ petition but with no success. Thereafter, the appellant filed a review petition also before the Hon'ble High Court for review of order dated 13.1.2017. That review petition also came to be dismissed by the Hon'ble High Court vide its order dated 15.02.2017.

Thereafter, this Tribunal dismissed the appellant's appeal because of non-compliance of the aforesaid direction given by this Tribunal to the appellant bank on 04.01.2017, vide order dated 20.2.2017. Against that order also the appellant filed a fresh writ petition being WPC No.237/2017. Same also came to be rejected by the Hon'ble High Court vide order dated 14.03.2017 with cost of rupees twenty thousand only.

While dismissing that writ petition the Hon'ble High Court had observed that with "Non-compliance of an order, challenge to which has failed, has entailed the consequences of dismissal of the appeal". It was further observed by the Hon'ble High Court that if the appellant bank was aggrieved by the dismissal of its earlier order dated 13.01.2017 the remedy was to approach the Hon'ble Supreme Court.

Instead of approaching the Hon'ble Supreme Court, the appellant bank has approached this Tribunal with an application that now it is ready to comply with the direction of this Tribunal given on 4.1.2017 for depositing the amount of rupees two crores with the Registrar of this Tribunal and today a bank draft for that much amount has also been brought.

Learned the senior counsel for the appellant has submitted that now that the bank has realized its mistake that it ought to have complied with this Tribunal's direction it has approached this Tribunal after losing before the Hon'ble High Court twice, along with the bank draft seeking permission of this Tribunal to accept that deposit now.

In my view, after having lost before the Hon'ble High Court, as noticed above, this attempt now being made by the appellant before this Tribunal is clearly an attempt to avoid the consequences of the dismissal of its two writ petition by the Hon'ble High Court and this kind of an attempt is highly misconceived action which cannot, but to be deprecated and condemned strongly. This application is, therefore, rejected with cost of rupees fifty thousand, which shall be paid to

*the Delhi High Court Legal Services Committee
within two weeks.”*

7. This order has been impugned by the petitioner Bank before us on the grounds that it is contrary to law and against the principles of natural justice. It is submitted that the observation of the Court that its application for restoration of an appeal was an abuse of process of Court is misconceived and against the canons of justice since by no stretch of imagination such an application can be considered as an abuse of process of Court. The learned DRAT has failed to realize that the petitioner Bank had been pursuing its legal remedies bona fide to protect public money. It is urged that they understood that the order dated 08.09.2016 of DRT-II was *ex facie* illegal and liable to be set aside. The DRAT had acted illegally by dismissing the statutory appeal without hearing the parties on merits and this has caused grave injustice to the petitioner Bank and, therefore, the order of DRAT was contrary to the findings of the Supreme Court in the case of ***Prestige Lights Ltd. vs. State Bank of India***, (2007) 8 SCC 449. It is further submitted that costs have been improperly imposed. On these facts, it is prayed by the petitioner/Bank that the learned DRAT be directed to restore the Appeal No. 439/2016

and dispose it of on merits after permitting the petitioner/Bank to deposit the amount of Rs. 2 crores with the Registrar of DRAT.

8. The short issue before us is whether the learned DRAT was right in refusing to restore the appeal of the petitioner Bank offering to deposit Rs. 2 crores which was dismissed as the Bank had failed to comply with the interim directions of deposit of Rs. 2 crores; and this order of dismissal upon being challenged before this Court in an earlier W.P.(C) No. 2372/2017, was confirmed by this Court vide order dated 14.03.2017 with imposition of costs; and whether the findings in the impugned order that the petitioner has abused the process of law and imposing consequential costs is justified or not.

9. During the course of hearing the arguments, this Court on 01.05.2017 passed the following order:-

“W.P.(C) No. 37542017 & C.M. No. 16540/2017 (stay)

1. The petitioner/Bank is aggrieved by an order dated 06.4.2017, passed by the learned DRAT in O. A. No. 7/2010 filed by it against an order dated 08.9.2016, passed by the DRT, directing it to refund an amount of Rs.2 crores to the respondents along with interest @ 9% p.a. from the date of forfeiture, till realisation.

2. It may be noted that this is the third petition filed by the petitioner/Bank against orders passed by the DRAT. In the

first petition, registered as WP(C) 296/2017, the petitioner/Bank had sought directions to the DRAT to hear the Bank's appeal without insisting on pre-deposit for stay of execution of the orders passed by the learned DRT.

3. Pertinently, vide order dated 04.1.2017, the learned DRAT had directed that subject to the petitioner/Bank depositing a sum of Rs.2 crores with the Registrar of the Tribunal within one week, there would be a stay of the order dated 08.9.2016, passed the learned DRT.

4. The aforesaid writ petition was disposed of by the Division Bench vide order dated 13.1.2017 with an observation that it was not considered necessary to interfere with the impugned order dated 04.1.2017, passed by the learned DRAT. However, the petitioner/Bank was granted an extension of one week to deposit the amount as ordered. Further, it was directed that in case a decision is taken by the DRAT for release of the amount deposited which is adverse to either of the two parties, a notice of atleast 14 days shall be issued to the other side and in the meantime, the said amount deposited by the Bank, shall be placed in a FDR so that it yields interest.

5. Instead of complying with the order dated 13.1.2017, the petitioner/Bank filed Review Petition No. 55/2017, which was dismissed vide order dated 15.2.2017. Thereafter, the petitioner/Bank appeared before the learned DRAT on 20.2.2017. On the said date, the petitioner's appeal was dismissed by holding that it had failed to comply with the preconditions imposed vide order dated 04.1.2017 and therefore there was no ground to hear the Bank on merits. Pertinently even on 20.2.2017, the petitioner/Bank did not offer to deposit the sum of Rs.2 crores with the DRAT.

6. Aggrieved by the order dated 20.2.2017 passed by the DRAT, once again the petitioner approached the High Court by filing WP(C) 2372/2017. Observing that there was no ground to interfere in the order passed by the learned DRAT, the Division Bench dismissed said petition vide order dated 14.3.2017, with costs of Rs.20,000/-.

7. Thereafter, the petitioner/Bank appeared before the learned DRAT on 06.4.2017 and for the first time offered to deposit a sum of Rs.2 crores, but the said request was turned down and its application for seeking condonation of delay in depositing the said amount and for restoration of its appeal, was rejected with costs of Rs.50,000/- to be deposited with the Delhi High Court Legal Services Committee.

8. Mr. Adarsh Dial, learned Senior Advocate appearing for the petitioner/Bank states that the first set of costs of Rs.20,000/- have already been deposited and the petitioner has brought in court, a pay order of Rs.2 crores which was prepared on 28.3.2017, with the intention of handing it over before the learned DRAT on 06.4.2017.

9. Learned counsel for the respondent No.1, who appears on a caveat, explains the reason for non-deposit of the balance auction price of Rs.19.06 crores, from out of the sale price of Rs.21.06 crores offered by the company in respect of a plot measuring 800 sq. mtrs., bearing No. 9, Sector 20, Dwarka, New Delhi. He submits that the petitioner/Bank had not revealed to his client the fact that there was a litigation between the borrower, M/s Nidhi Builders (I) Pvt. Ltd. and M/s Ansal Properties & Infrastructure Ltd. in respect of the very same parcel of land and an Arbitrator had been appointed by the High Court for adjudicating the said disputes. He states that pendency of the aforesaid litigation came to the knowledge of the respondent No.1

only on 14.12.2013, when counsel for M/s Ansal Properties served a notice on the company.

10. Mr. Dial, learned Senior Advocate however disputes the submission made by other side that the information with regard to the pending litigation was deliberately withheld by the Bank. He states that the petitioner may be permitted to file an affidavit clarifying inter alia the date on which it first came to the knowledge of the Bank that any litigation was pending between M/s Nidhi Builders (I) Pvt. Ltd. and M/s Ansal Properties & Infrastructure Ltd.

11. The said affidavit shall be filed by the petitioner/Bank within two weeks with a copy to the counsel for the respondent No.1.

12. In the meantime, the petitioner/Bank is permitted to deposit a sum of Rs.2 crores in this Court along with interest @ 9 % p.a. calculated w.e.f. 04.1.2017, till the date of deposit, within two weeks from today. As and when the said amount is received, the same shall be placed in a FDR, initially for a period of three months, to be renewed thereafter from time to time, till further orders.

13. Subject to the petitioner/Bank depositing the aforesaid amount within the timeline stipulated, enforcement of the order dated 08.9.2016, passed by the learned DRAT shall remain stayed till the next date of hearing.

14. List on 18.7.2017.

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10. Pursuant to the directions of the Court, the petitioner filed an affidavit which came for consideration by this Court on 12.10.2017. On that date, this Court passed the following order:-

“1. An affidavit has been filed by the petitioner/Bank in terms of the order dated 01.05.2017. However, a perusal thereof does not indicate the specific date on which the petitioner/Bank claims that it came to know for the first time that any litigation was pending between M/s Nidhi Builders Pvt. Ltd. and M/s Ansal Properties & Infrastructure Ltd, in respect of the subject property.

2. Mr. Dial, learned Senior Advocate appearing for the petitioner submits that it has been averred in para 8 of the affidavit that an impleadment application was filed by M/s Ansal Properties & Infrastructure Ltd, on 18.08.2011, in the Recovery Application filed by the petitioner and only then

did the Bank come to know about the fact that there is some litigation between aforesaid parties.

3. A copy of the said affidavit has been furnished to the learned counsel for the respondent who states that he has filed a counter affidavit.

4. We had already observed in the order dated 18.07.2017 that when notice has not even been issued on the petition, the question of the respondent filing a counter affidavit does not arise. The Registry is directed to detach the said reply and return the same to the counsel for the respondent. The respondent is permitted to file a brief reply to the affidavit filed by the petitioner, if necessary.

5. The matter remains at the stage of admission. The affidavit of the petitioner shall be examined on the next date as learned counsel for the petitioner states that he is not well today and not in a position to address arguments.

6. List on 14.02.2018.

7. Interim orders to continue.”

11. The said order of this Court clearly shows that the petitioner Bank was aware of the litigation between the borrower and M/s Ansal as far back as on 18.08.2011.

12. It is apparent that respondent No. 1 wrote a letter dated 14.12.2013 to the petitioner Bank, on coming to know that a third party was claiming a lien over the subject property, seeking clarification from the latter. The relevant paragraph of the letter dated 14.12.2013 is reproduced as under:-

“In view of above, you are requested to please brief us/clarify us the facts of the

abovementioned case as we are not known of any such issues before the purchase of the abovementioned property and we have accepted the offer for purchase of property with clean title, free from any sort of encumbrance and disputes if any.”

13. Although, the petitioner Bank replied to the said letter on 21.12.2013 but it recorded the facts regarding litigation as under:-

“M/s Ansal properties & Infrastructure limited (APIL) filed various petitions before DRT, DRAT and the Hon’ble High Court which were dismissed by the Tribunals and Hon’ble High Court and the APIL has not challenged the same in Supreme Court to our knowledge. An Arbitration Petition is pending before the Ld. Arbitrator appointed by the Hon’ble High Court to decide the rights of the parties inter se between the original owner and the APIL and bank is not a party to the same as such the rights of the bank to sell the property cannot be disturbed by the Ld. Arbitrator in such proceedings.”

(emphasis supplied)

This reply clearly shows that the petitioner Bank was vague in replying whether the subject property which belonged to the borrower was free from encumbrances. Respondent no. 1 again wrote a letter dated 24.01.2014 to the petitioner Bank and specifically sought the information from the bank to give **“clear instructions of the fact that**

the property in question shall not be part of any litigation and no such declaration till date has been given.” In reply to this letter dated 31.01.2014, the petitioner Bank stuck to the disclosures made in its earlier reply dated 21.12.2013 and did not specifically convey to respondent no. 1 that no litigation between the borrower and M/s Ansals *qua* this property was pending. When the petitioner Bank appeared before this Court in the present writ petition on 01.05.2017, respondent no. 1 appeared on caveat and explained to the Court the reasons for non-deposit of the balance auction price. It was submitted that the money was not deposited, because the petitioner Bank did not reveal the fact that there was a dispute pending between the borrower / respondent no. 2 and M/s Ansal in respect of the subject property and that an arbitrator had been appointed by the High Court for adjudicating the said dispute.

14. Despite the fact that as per their own admission in paragraphs 8 & 9 of the affidavit, the petitioner was aware of the litigation pending between the borrower and M/s Ansal, yet in para 3 of its affidavit dated 15.05.2017 it took the following plea:-

“3. I submit that to the best of knowledge of the Bank there is no arbitration pending with regard to the disputed plot of land as alleged and respondent No. 1 is put to proof of the allegation made by it in hearing dated 01.05.2017.”

15. The petitioner Bank did not stop there and further took the plea in its affidavit filed before this Court as under:-

“5. I further categorically state that at no stage Respondent No.1 ever sought any information from the Petitioner Bank with regard to the title of the property or claim by any 3rd party in the property....”.

16. This plea on oath by the deponent, Mr. Ram Kumar, Chief Manager, is patently, on the face of it, is false. The petitioner Bank had admittedly received two letters from the respondent No. 1 and had duly replied the same wherein it did not disclose the requisite information to the respondent No. 1; yet before us, the petitioner Bank had deposed on affidavit that at no stage, such information was sought by respondent No. 2.

17. In the affidavit, the petitioner Bank had again deposed in para 8 as under:-

“8. I state that in the Recovery Application before DRT, M/s Ansal Properties and Infrastructure Ltd. (APIL) filed an I.A. No. 648/2011 in OA 07/2010 on 18.08.2011, praying for impleadment in OA 7/2010 as a

necessary and proper party, claiming right in disputed property, which was dismissed vide order dated 14.11.2011. Against the aforesaid order dated 14.11.2011, APIL filed review application before PO, DRT-II, Delhi, which was also dismissed on 15.12.2011. Subsequently, APIL filed Misc. Appeal No. 448/2011 before the Hon'ble Chairperson, DRAT, Delhi on 23.12.2011 against the order dated 14.11.2011, which was also dismissed on 09.01.2012. The DRAT held that claim made by the APIL to disputed property based on unregistered Collaboration agreement did not confer any right whatsoever on APIL in the disputed property. Copy of the order dated 14/11/2011 and 15/12/2011 of DRT, Delhi are annexed as Annexure A-1 and Annexure A-2 respectively and copy of the order dated 09.01.2012 of DRAT is annexed as Annexure A-3 to the affidavit."

18. This clearly shows that the petitioner Bank was all along aware of the litigation *qua* the subject property between the borrower and M/s Ansal, yet it did not disclose this information while auctioning the property. Nor did it disclose specifically to respondent No. 1, the bidder of the subject property in this regard despite its repeated enquiries.

19. No bonafide purchaser of the property in an auction would like to purchase a property which is the subject matter of any litigation or which is subject to lien and encumbrances. Respondent No 1 was justified in not depositing the balance amount of the sale proceeds for the reason that the petitioner/Bank had failed to assure him that the

property was free from any lien or encumbrances or was not subject to any other litigation with a third party. The petitioner Bank has apparently not acted in a bonafide manner. Not only that, it had also failed to comply with the repeated directions of this Court. It abused the process of the law at every stage starting from seeking cancellation of the sale of the subject property in favour of respondent No. 1 by concealing from the notice of the Tribunal the fact that respondent no. 1 was seeking the extension of time for payment of balance sale money only because the bank was not able to confirm to him that the property was free from any litigation. This intentional act of the petitioner Bank, first putting the subject property to auction by concealing the fact that it was the subject matter of litigation between the borrower and M/s Ansal in other proceedings and thereby inducing an innocent bidder to bid for the property, and secondly, not informing respondent No.1, on specific enquiry from him, about the factum of the alleged claim of the third party on the subject property, caused tremendous inconvenience and harassment to respondent No.1. The petitioner Bank was very much aware that the subject property was under litigation in an arbitral proceedings between borrower and M/s

Ansal, who had filed an impleadment application in recovery proceedings way back on 18.08.2011.

20. In the totality of the facts and circumstances of the case, we are of the opinion, that the Bank officials, who were part of the entire transaction of putting the property to auction, deliberately concealed the claim of lien of third party over the subject property, and subsequently, even on enquiry, did not disclose the correct facts to respondent No. 1. Not only that, those officials in collusion with the Bank, fraudulently moved an application for cancellation of the sale permission before Tribunal on the ground that respondent No.1 had not paid the balance money; and thereby obtained an order of cancellation of the sale permission in favour of respondent No.1 by concealing from the Tribunal the enquiry letters of the respondent No.1 and subsequently, put the subject property to resale, which was sold for much lesser amount than the respondent No.1 had offered and thereby causing losses to the bank, are required to give their explanation of such conduct. We, therefore, direct the concerned authorities to make an enquiry and submit its report with this Court within three months from today.

16. The petitioner Bank has not come before this Court with clean hands. The conduct of the petitioner Bank disentitles them from seeking any equitable relief. Such litigants who, in their public dealings, act malafidely and with ulterior motives for undue gain, deserve to be treated with iron hands.

17. In ***Dr. Buddhi Kota Subbarao vs. K.Parasaran and others (1996) 5 SCC 530***, the Supreme Court has clearly held that.....“*No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions.*”

18. The Supreme Court has also advised the Courts to take stern action against such litigants. In ***Indian Council for Enviro-Legal Action vs. Union of India (UOI) and Ors. (2011) 8 SCC 161***, the Supreme Court has observed as under:-

“216. In consonance with the principle of equity, justice and good conscience judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no

wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the Respondent or the Defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

217. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.

19. Recently, the Three-Judge Bench of the Supreme Court in ***Dnyandeo Sabaji Naik And Anr V. Mrs. Pradnya Prakash Khadekar And Ors (2017) 5 SCC 496***, has come heavily on a litigant who abused the process of the Court and imposed an exemplary cost and has held as under:-

“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow.

Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception—are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that

the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.”

20. From the narration of the facts, the Court is clear that the petitioner Bank has been repeatedly reaching this Court on the same issues and is not complying with the directions of the Court. The act of the petitioner/Bank approaching the DRAT though the order of DRAT, dismissing its appeal was upheld by this Court in an earlier writ petition bearing W.P.(C) No.2372/2017, is nothing but an abuse of the process of the court. Even challenging the impugned order amounts to abuse of the process of the court, which order is in consonance with the order dated 14.03.2017 of this Court in an earlier W.P.(C) No.2372/2017. Such conduct is not expected from a public authority. Such conduct by public authority needs to be curtailed. We, therefore, while dismissing the present writ petition impose costs of

Rs.2 lakhs, which shall be deposited with Delhi High Court Legal Aid Services Committee.

21. As per the directions of the Court dated 01.05.2017, the petitioner Bank has already deposited a sum of Rs. 2 crores with the Registrar of this Court. The said money along with the interest accrued thereon shall be released to the respondent No. 1/M/s SSP Tradex Private Ltd. The petitioner Bank is also directed to pay the interest @ 12 % per annum on the said sum of Rs. 2 crores to respondent no. 1 from the date when the said money was deposited by respondent no. 1 with petitioner Bank, till the date on which the said sum was deposited with this Court, pursuant to the direction of this Court dated 01.05.2017.

22. In view of the above, the writ petition is disposed off along with pending applications.

**DEEPA SHARMA
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

MAY 04, 2018/ss