$~45

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

\+ W.P.(C) 8915/2018

MONIKA PATNI AND ANR ...... Petitioners

Through: Mr Piyush Singh, Mr Akshay Srivastava, Ms Soumya Vaishy and Mr Ismail, Advocates.

versus

AXIS BANK LIMITED AND ORS ...... Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC with Mr T. P. Singh, Advocate for R-3/RBI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 27.08.2018

C.M. No.34297/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 8915/2018 & C.M. No.34296/2018

2. The petitioners have filed the present petition, *inter alia*, impugning an order dated 15.06.2018 (hereafter 'the impugned order') passed by the Debt Recovery Tribunal-II (hereafter 'DRT') in OA No.1228/2017 captioned '***AXIS Bank v. Monika Patni & Ors***.' By the said order, the DRT had recorded the settlement arrived at between AXIS Bank Limited (hereafter 'AXIS Bank') and Emaar MGF Lands Limited (hereafter the 'Developer'). In terms of the settlement, the Developer had paid an amount of ₹51,17,500/- towards full and final settlement of the claim of AXIS Bank.

Consequently, AXIS Bank withdrew the OA filed before the DRT.

3. The controversy relates to a residential flat booked by the petitioners in a residential project being developed by the Developer in Gurgaon – unit no.PGN-02-1103 Palm Gardens, Sector 83, Kherki Daula, Gurgaon, Haryana (hereafter 'the property in question'). The petitioners had entered into a Builder Buyer Agreement dated 23.01.2012 with the Developer for acquiring the property in question.

4. AXIS Bank had agreed to lend assistance to the petitioners in terms of the Tripartite Agreement dated 21.04.2014 (hereafter 'the Agreement'), whereby AXIS bank agreed to disburse the loan of ₹68 lakhs to the petitioners. In terms of the Agreement, the payments were to be made directly to the Developer.

5. AXIS Bank had in terms of the Agreement directly disbursed certain amounts to the Developer. Thereafter, AXIS Bank had called upon the petitioners to repay its dues (the amount disbursed to the Developer along with interest). The petitioners claim that the Developer was not entitled to receive the payments made to it as it had defaulted in its obligations. It is also alleged that the Developer had also made certain misrepresentations to the petitioners and other flat buyers.

6. In terms of the Agreement, the petitioners were obliged to repay AXIS Bank the loan advanced to it, albeit paid directly to the Developer. Concededly, the petitioners had failed to do so. In the aforesaid context, AXIS Bank had instituted proceedings before the DRT.

7. The petitioners claimed that the said loan was to be disbursed in tranches and the petitioners had called upon the AXIS Bank not to disburse the aforesaid amount. However, it is alleged that despite specific

instructions in this regard, AXIS Bank had proceeded to pay the said amount to the Developer.

8. The Developer has settled the claim of AXIS Bank in terms of the settlement arrived at between the said parties. The Developer has also cancelled the booking of the property in question in favour of the petitioners.

9. The petitioners are, essentially, aggrieved by the settlement arrived at between AXIS Bank and the Developer inasmuch as, the impugned order specifically states that "*defendant no.3* [the Developer] *is at liberty to deal with this property*". The petitioners state that the impugned order adversely affects their right as the petitioners also claim right in respect of the property in question.

10. I have heard the learned counsel for the petitioners.

11. At the outset, it is necessary to observe that the impugned order must be read as a whole. The said order is reproduced below for ready reference:-

> "Heard the counsel for the applicant bank and the counsel for the defendant no.3 who filed joint application for recording of settlement. It is submitted that the applicant bank is receiving an amount of Rs.51,17,500/- towards full satisfaction of claim of applicant bank in the OA from Defendant no.3 and the OA is withdrawn consequent to above settlement. Today the defendant no.3 handed over a DDA bearing no.198216 dated 14.6.2018 for Rs.117,500/- to the counsel for the applicant bank. As the matter is settled OA is permitted to be withdrawn and disposed off as settled. The charge created and lien in favour of the property is hereby vacated. Defendant no.2 is at liberty to deal with this property. Applicant bank is entitled for refund of court fee as per rules. File be consigned to record room."

12. It is apparent from the plain reading of the impugned order that the

observation made by the DRT, to the effect that the Developer is at liberty to deal with the property in question, has been made in connection with the security interest in the property in question created in favour of AXIS Bank. The impugned order merely means that the security interest in the property in question created in favour of AXIS Bank is now lifted. This order does not affect the right of the petitioners in any manner as, admittedly, the petitioners were not parties to the settlement arrived at between AXIS bank and the Developer. It is also stated that the petitioners had no knowledge of the same.

13. In view of the above, the grievance of the petitioners that the impugned order precludes them from claiming rights in the property in question, is misconceived. The petitioners' rights, if any, against the Developer in respect of the property in question, are not affected by the impugned order.

14. The petitioners have also sought that various other directions be issued to Banks and Non-Banking Finance Companies in order to prevent such kind of disputes in future; however, this Court does not consider it apposite to issue any such general directions in this case. The pending applications also stand disposed of.

15. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

AUGUST 27, 2018
MK