$~8 & 11 *(common order)*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 24th August, 2018

\+ **CRL.M.C. 280/2015 and Crl.M.A.5628/20185**

RAKESH MITTAL THR HIS GENERAL ATTORNEY T R MITTAL ..... Petitioner

Through: Mr. K.C. Mittal, Advocate with Ms. Ruchika Mittal, Mr. Mayank Bansal, & Mr. Yugansh Mittal, Adv.

versus

STATE & ANR. ..... Respondents

Through: Mr. Akshai Malik, APP for the State
Mr. Sunil Sabharwal, Standing Counsel with Mr. Rahul Sabharwal, Adv. for R-2.
Mr.Vikas Nagpal, Adv. for R-3.

\+ **CRL.REV.P. 798/2014 and Crl.M.A.20277/2014**

DELHI COOPERATIVE HOUSING FINANCE CORPN. LTD (THR ITS SENIOR MANAGER) ..... Petitioner

Through: Mr. Sunil Sabharwal, Standing Counsel with Mr. Rahul Sabharwal, Adv.

versus

STATE (GOVERNMENT OF NCT OF DELHI) & ANR ..... Respondents

Through: Mr. Akshai Malik, APP for the State
Mr. Mayank Bansal, Adv. for R-2.
Mr. Vikas Nagpal, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. During investigation into the first information report (FIR) No.493/2013 by Police Station Prashant Vihar, registered on 18.09.2013 on the complaint of T.R. Mittal (the Principal of the petitioner in Crl.M.C.280/2015) alleging offence punishable under Section 420 of the Indian Penal Code, 1860 (IPC), the investigating agency had frozen the account of Delhi Cooperative Housing Finance Corporation (DCHFC) (petitioner in Crl. Revision Petition No.798/2014) under Section 102 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to the extent of Rs.2.28 crores.

2. Against the aforesaid backdrop, two applications came to be submitted one on behalf of the complainant under Section 451 Cr.P.C. for release of the above-said amount of money on *supurdari* and the other on behalf of DCHFC seeking the said order to be set aside and for certain clarifications. The said applications were decided by the Metropolitan Magistrate by common order dated 15.09.2014. The material part of the said order being:-

> "*6. The money is paid by the complainant to DCHFC as part payment of sale consideration amount pursuant to auction proceedings as per terms of auction notice. The said money is paid towards satisfaction of a civil court's award. Civil law is explicit with respect to procedure in respect of setting aside of auction proceedings. Rule 137 of the Delhi Co-operative Societies Rules, 2007 prescribes detailed procedure for setting aside of auction proceedings and there is no need go in detail so far as*

present proceedings are concerned. It will not be out of place to mention that complainant/auction purchaser had already moved an application seeking recall of auction sale proceedings and repayment of money before the Assistant Collector, Grade-1 and by order dated 31.01.2014 the Assistant collector, Grade-1 has ordered the application to be placed before the Registrar Co-operative Society for decision as per law.

7. Setting aside of auction proceedings involves complex questions such as determining legality of auction proceedings, the procedure adopted, limitation period for setting aside auction, return of sale consideration, interest determination, possession of property in question (admittedly complainant is in possession of two flats in question) etc. Decision on the said complex issues is in sole domain of the civil court and jurisdiction on aforesaid aspects cannot be transgressed by criminal court. This application by complainant is nothing but an attempt made to bypass the civil proceedings to set aside the auction. Moreover whether the money involved is cheated sum or not is matter of investigation and it is still to conclude. Accordingly the application for release of auction money on Supardari is not maintainable and dismissed. However complainant/applicant is at liberty to approach appropriate forum to redress his grievances.

8. It is pointed out by counsel for DCHFC that IO has made attachment of Rs. 2.28 Crores but a sum of Rs. 8 lakh as stated by the prosecution is not received by them and is wrongly attached by the IO. Counsel for applicant/complainant do not dispute this fact. IO also concurs that fact. Therefore amount to the extent of Rs. 8 lakh is undisputed and its attachment/seizer to that extent is set aside.

9. So far as application of DCHFC for setting aside freezing direction by the IO is concerned, it is clarified that search and seizure of the case property is in sole *domain of investigating agency pursuant to powers u/s 102 Cr.PC.. Whether the money involved is cheated money or not, cannot be decided at this stage as the investigation is still in progress and final report is still to be filed. The court cannot ignore the fact that money involved is paid by complainant/applicant to DCHFC towards the sale consideration amount in auction proceedings conducted as per law by the civil court. Money is received by DCHFC pursuant to legal process followed in execution proceedings. The amount involved is huge sum of Rs. 2.20 crores and there will be serious monetary loss of interest income to public exchequer if the money is kept idle/blocked. Therefore keeping in view the peculiar facts and circumstances, DCHFC is directed to execute indemnity bond for a sum of Rs. 2.20 crore giving undertaking to deposit the money subject to outcome of case and directions of the court. It is clarified that DCHFC is at liberty to deal with the bank account and money as per their discretion and policy decision. The order of freezing of money issued by IO is modified to the aforesaid extent. Application of DCHFC is disposed accordingly."*

3. The said order was challenged by the complainant before the court of Sessions by criminal revision petition (No.05/2014) which was decided by the said court on 24.12.2014. The revisional court vacated the order of the Metropolitan Magistrate observing thus:-

"8. The impugned order is set aside due to following reasons also:-

(1) DDA sanctioned only 100 flats whereas Suvidha Cooperative Housing Society constructed 100+2 flats. The two flats were constructed on the ground floor earmarked for parking. So, the two flats i.e., flats no.sA-29 and B-22 were illegal. These two flats were offered by the society as consideration to the petitioner but both were illegal because those were constructed against DDA

bylaws. So, consideration offered by Suvidha was forbidden by law and hence, MOU/Agreement between complainant and Suvidha was not contract because as per Section 10 of the Indian Contract Act, 1874, the consideration should be lawful.

(2) Officials of DCHFC participated in execution proceedings knowing fully well that only 100 flats were mortgaged with it and not the two flats in question.

(3) The officials participated in execution proceedings knowing well that the said flats i.e., flat nos. A-29 and B-22 were not in the layout plan of DDA. Those flats were not sanctioned by the DDA.

(4) DCHFC officials allowed auction proceedings to go on knowing well that the auction was to be held for sale of two illegal flats.

(5) DCHFC officials allowed petitioners to deposit the bid amount with it knowing that bid had been held for illegal flats.

(6) DCHFC officials never objected in execution and auction proceedings that flats in question cannot be sold in auction."

4. The said order has been challenged by both the parties through the petitions at hand.

5. After some hearing, the learned senior counsel for the petitioner in Crl.M.C.280/2015 submitted, on instructions, that he may be permitted to withdraw the said petition under Section 482 Cr.P.C., the petitioner (complainant) reserving the right to take out appropriate proceedings for necessary relief before the appropriate forum under the civil jurisdiction, *inter alia*, to challenge the auction where under money was paid to the Bank.

6. In view of the above, the petition (Crl.M.C.280/2015) and the applications filed therewith stand dismissed as withdrawn.

7. In the considered opinion of this court, the Metropolitan Magistrate was absolutely right in allowing the prayer of the Bank – petitioner in Crl. Rev. Petition No.798/2014, relieving it from the rigor of its account being frozen pending further investigation into the FIR and proceedings in its wake inasmuch the money cannot lie dormant. It is harsh and unfair to deprive it of the use of the money during the interregnum. In these circumstances, the order of the revisional court dated 24.12.2014 is set aside and the order dated 15.09.2014 of the Metropolitan Magistrate, quoted above, stands revived and restored.

8. Both the petitions and the applications stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 24, 2018
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