

\$~43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9799/2018, CM No. 38183/2018**
KARAN GAMBHIR

..... Petitioner

Through: Mr. Amit S. Chadha, Sr. Adv. with
Mr. Kunal Sachdeva, Adv.

versus

INDIABULLS HOUSING FINANCE LIMITED

..... Respondent

Through: Mr. Ashwini Kumar Mata, Sr. Adv.
with Mr. Pallav Pandey & Mr. Sharad
Sharma, Adv.

Ms. Lucky Palta, Adv. for Resolution
Professional

Mr. S.K. Rungta, Sr. Adv. appearing
for Ms. Pratiti Rungta, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **20.09.2018**

1. This petition has been filed challenging the impugned order dated September 14, 2018 (Annexure P-1) whereby certain orders have been passed by the DRAT, *suo moto* exercising its power under sub sections (18) and (25) of Section 19 of the Recovery of Debts and Bankruptcy Act, 1993.
2. The petitioner in the writ petition has neither filed the certified copy of the order nor the *dasti* order as it was not provided to him. On the

contrary, he brings on record, a transcript of the order dated September 14, 2018 (Annexure P-1) and in para 1 of the writ petition, the petitioner makes an averment that the order which has been filed is what was heard by his counsel in the open Court and the same is based on the instructions of his counsel.

3. On going through the aforesaid (Annexure P-1) and an uncertified copy of the order dated September 14, 2018 which was produced before us on the last date, we noticed various discrepancies in these two orders, and directed the petitioner to file an affidavit of the counsel indicating as to how there are marked differences between the order annexed as Annexure P-1 and the order now produced before us by the parties.

4. Today when the matter is taken up, Sh.S.K. Rungta, Sr. Adv., representing the counsel Ms. Pratiti Rungta, who appeared for the petitioner on September 14, 2018 before DRAT, has placed before us a photocopy of the communication and submitted that what was communicated by the counsel to the petitioner on September 14, 2018 at 18:16 hours is the following order, as noted by the counsel:-

“Bank seeking adjournment as arguing counsel for the bank not available therefore cost of Rs.10,000 to be deposited by FI in Kerala relief fund.... Authorized (sic.) officer to visit

property being _____ on 18/9 at 10.00 pm to prepare inventory (sic.) of movables lying at (sic.) the said (sic.) premises which individual respondents state that they reside there... counsel for individual respondents state that the said property does not belong to them... the authorized officer shall not serve notice before going as date has been fixed....list on 27/9.”

The communication produced by the counsel, who represented the petitioner on 14th September, 2018 is taken on record.

5. In compliance with our last order dated 18th September, 2018, an affidavit is filed by the petitioner himself. We find that now the petitioner, in his affidavit filed, does not speak about the counsel hearing the order while it was being dictated in the open Court and giving a transcript of the same to him. On the contrary, the petitioner now comes out with a case that he was present in the Court, heard the order as it was dictated and it is his contention that Annexure P-1 was prepared by him based on the order that what he heard in the open Court on September 14, 2018. This contention of the petitioner is totally contrary to the averment made in para 1 of the writ petition.

6. That apart, we find that in the transcript filed before us as Annexure P-1, the order is for attachment of the property, whereas the communication

sent to the petitioner by his counsel speaks about the inventory of the movables lying in the said property to be prepared. On going through various aspects of the matter as brought on record, we find that the petitioner has misused the process of law, has filed the petition on false and incorrect averments and has sworn a false affidavit with regard to various factual aspects of the matter. He has not brought on record the correct fact as was indicated to him by his counsel on September 14, 2018. That being so it was a fit case where we could take action against the petitioner for filing a false affidavit under Section 340 Cr.PC, so also for misusing the process of law and initiate criminal contempt against him. But at present, in view of the unconditional apologies expressed we let off the petitioner with a warning to remain careful in future, failing which we would take action against him.

7. We find that the counsel who represented the petitioner on September 14, 2018, has correctly informed the proceedings to the petitioner and the petitioner for reasons best known to him, may be for taking undue advantage of the situation, has come out with a false claim before us.

8. Finding the petitioner not entitled for grant of our discretion under the extraordinary jurisdiction, in a proceeding under Article 226 of the Constitution of India, we dismiss the petition *in limine*. The respondents are

free to proceed in the matter as directed by the DRAT.

9. The petitioner has submitted an unconditional apology in the affidavit, dated 19th September, 2018. We accept the unconditional apology of the petitioner with a warning to the petitioner to remain careful in future.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 20, 2018/ak