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

\+ W.P.(C) 10064/2018

KANWAL KAPOOR ..... Petitioner

Through: Mr. Sanjeev Narula, Mr. Vijay Sowdhi, Ms. Sangeeta Sowdhi and Mr. Krish Kalra, Advs.

versus

THE PUNJAB & SIND BANK & ORS ..... Respondents

Through: Mr. Rajinder Wali, Adv.

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

O R D E R

% **25.09.2018**

CM. No. 39253/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10064/2018

1. The present petition has been filed by the petitioner challenging the order dated 13th August, 2018 passed by the Debt Recovery Appellate Tribunal (DRAT) in Appeal No. 377/2015 whereby the DRAT has allowed the appeal filed by the respondent no.1 / Bank against the order dated 3rd March, 2015 passed by the Debt Recovery Tribunal (DRT) dismissing the appeal filed by the respondent no.1 / Bank which was an appeal under

Section 30 of (Recovery of Debts Due to Banks and Financial Act, 1993 (RDDBFI Act in short), against the order dated 16th July, 2014 passed by the Recovery Officer.

2. Some of the facts are that one Ram Narain Gogia, respondent no.5 herein had executed a Power of Attorney in favour of the wife of the petitioner in respect of property No. D-137, Anand Niketan, New Delhi on 10th December, 1976. The petitioner acquired the said property vide agreement to sell dated 10th December, 1976 and possession of the same was taken from Ram Narain Gogia after paying full consideration. It appears that respondent nos. 2 & 3 had acquired loan from the respondent no.1 / bank for which respondent no.5 stood as a guarantor and created equitable mortgage of the property being D-137, Anand Niketan, New Delhi in favour of the respondent no.1 on December 7, 1978. On October 25, 1994, a conveyance deed was executed by the President of India through DDA in favour of the petitioner in the property on the basis of agreement to sell dated 10th December, 1976. Respondent no.1 Bank filed a Suit bearing no. 232/1988 for recovery of Rs.63,31,611/- before this court. The same was transferred to DRT after the promulgation of RDDBFI Act and the suit was converted as an Original Application bearing no. 260/1995. The DRAT decided the

Original Application and a recovery certificate for recovery of the amount determined was issued on 6th June, 2007. On 8th October 2012, the Recovery Officer of the DRT attached the property being D-137, Anand Niketan, New Delhi and got affixed the order of attachment on the premises. On 6th November, 2012, petitioner filed objections to the attachment notice against the aforesaid property before the Recovery Officer in RC bearing No. 5/2007. On 16th July, 2014, the Recovery Officer decided the objections in favour of the petitioner by holding as under:

> *"In view of the above stated facts and circumstances, it is observed that the mortgage qua the property bearing no. D-137, Anand Niketan, New Delhi in favour of CH Bank has been created subsequent to purchase the property in question by the objector. As per Section 48 of the TPA Act, the objector has the priority right in the property in question as the objector has purchased the aforesaid property before the creating of the mortgage in favour of the CH Bank.*
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> *Section 47 of the Registration Act, provides that a document executed earlier, though registered later, shall be effective and operative from the date of its execution.*
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> *In this matter, although the sale deed of the property in question was made on 25.10.1994, but the sale deed as per the Section 47 of the Registration Act, shall relate back to the date of execution, i.e., 10.12.1976 the date when the agreement to sell qua the property in question has been made by the CDs.*
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> *In view of the above, the objection of the objector are allowed."*

3. The order dated 16th July, 2014 of Recovery Officer was challenged

by respondent no.1 / Bank by filing appeal under Section 30 of the RDDBFI Act in the month of August, 2014. The DRT dismissed the appeal vide order dated 3rd March, 2015. The order dated 3rd March, 2015 was challenged by the respondent no.1 / Bank by filing an appeal being 377/2015 before the DRAT. Vide order dated 14th December, 2015, the DRAT remitted the matter back to the Tribunal for deciding whether or not, the amendment under Section 64 Cr.P.C. in the year 2002 is retrospective in nature. Aggrieved by the order dated 14th December, 2015, petitioner herein filed a Writ Petition (Civil) 1362/2016 before this Court. This court vide order dated 19th February, 2016 restored the appeal filed by respondent No.1 Bank bearing no. 377/2015 for fresh adjudication. The said appeal has been allowed by the DRAT whereby the orders passed by the Recovery Officer and the DRT were set aside. The Recovery Officer was directed to proceed to take the physical possession of the property in question and then to sell the same in public auction.

4. Mr. Sanjeev Narula, learned counsel appearing for the petitioner by drawing our attention to Page 169 of the paper book, which is a copy of the loan application, submits the same depicts the property being D-137, Anand Niketan, New Delhi in the name of the petitioner herein, which shows the

Bank was in the knowledge that the property is of the petitioner. He states, the said loan application had been submitted by the borrowers without the knowledge of the petitioner. He states, Bank could not have accepted the property for being mortgaged when such a request was not made by the owner i.e the petitioner herein. He also states that even in the Original Application filed by the Bank in the schedule attached by the respondent no.1 / bank, the property in question being D-137, Anand Niketan, New Delhi has not been reflected, rightly so, as the Bank was conscious of the fact that the property does not belong to the borrowers / guarantors. But despite that, the same has been attached and directed to be proceeded against, in satisfaction of the debt determined by the DRT. He states, admittedly the petitioner was not a party in Original Application. He relies upon the judgment of the Coordinate Bench of this Court in the case of ***Swaraj Kishore Arora v. Indian Bank 2016 (230) DLT 269 DB*** to contend that under Rule 4 of the Second Schedule of the Income Tax Act, 1961, which is *para-materia* to section 25 of the RDDBFI Act, the petitioner had filed objections as the petitioner had interest in the property being in possession of the same and the Recovery Officer having decided the objections in his favour which was upheld by the DRT, the DRAT could not have reversed the conclusion when (i) agreement to sell dated 10th December, 1976 was a validly executed document in favour of the petitioner pursuant to which the entire sale consideration was paid by the petitioner; (ii) absolute and physical possession of the property was handed over to the petitioner at the time of execution of the agreement to sell and (iii) agreement to sell was crystalized after the petitioner converted the property to freehold and a conveyance deed was validly executed on 25th October, 1994. In the end, it is his submission that the order the DRAT needs to be aside.

5. On the other hand, Mr. Rajinder Wali, learned counsel appearing for the respondent no.1 / bank states in view of the judgment of the Bombay High Court in ***Dr. Anil Nand Kishore Tibrewala and Anr. v. Jammu and Kashmir Bank Ltd. and ors. I (2007) BC 6 (DB)***, the remedy for the petitioner is to approach the DRT under Section 19 (25) which stipulates the Tribunal to prevent abuse of its process can assume the jurisdiction and decide the issue by exercising powers conferred under Section 22 of the Act and the Tribunal is bound to consider such application so moved and dispose it of in accordance with law after giving opportunity to all parties before it. He also states, the judgment in the case of ***Dr. Anil Nand Kishore***

Tibrewala and Anr. (supra) was referred to before the DRAT.

6. Having considered the submissions made by the learned counsel for the parties, including the submission made by Mr. Wali about the remedy for the petitioner to approach DRT under Section 19(25) of the RDDFI Act to which Mr. Narula, also concurs, we without going into the submissions made by them on merit, set aside the order of the DRAT dated 13th August, 2018 and grant liberty to the petitioner to seek such remedy as available in law, if the respondent No.1 Bank proceed against the property in question in satisfaction of the debt determined by the DRT. The concerned judicial authority shall consider the petition, if filed by the petitioner, uninfluenced by the order passed by the Recovery Officer dated 16th July, 2014 and the DRT dated 3rd March, 2015.

The writ petition stands disposed of.

CM. No. 39252/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 25, 2018/*jg*