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

% Judgment delivered on: 20.12.2018

\+ BAIL APPLN. 1813/2017 & Crl.M.A.48936/2018

SHIV CHARAN SHARMA ..... Petitioner

versus

STATE (GOVT OF NCT DELHI) ..... Respondent

\+ BAIL APPLN. 1817/2017

SH MANOJ SHARMA ..... Petitioner

versus

STATE GOVT OF NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vivek Sharma, Adv.

For the Respondent : Ms. Kusum Dhalla, APP for the State.
SI Sandeep, Police Station North Rohini.
Mr. S.A. Khan, Adv. for the Central Bank of India.
Ms. Chanan Parwani with Mr. Samar Kachwaha, Advs for the complainant.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
20.12.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners seek anticipatory bail in FIR No.296/2016 under

Sections 420/120B IPC, Police Station North Rohini.

2. The allegations in the FIR are that the complainant is an owner of a property bearing No.G-23/183, Sector-7, Rohini, Delhi. The petitioners had approached the complainant for entering into a collaboration agreement for reconstruction of the subject property. It is alleged that once the subject property was demolished, the petitioners stated that they had run short of funds and represented to her that they could obtain loan in her name or her son's name for financing the project.

3. It is alleged that petitioners had assured that the property would always be secured and loan would be obtained only for the purposes of construction. It was represented that the petitioners shall ensure that there is no liability on the complainant and that they shall pay the instalments and settle the dues of the bank.

4. It is alleged that after the loan was taken in the name of the complainant and her son, the petitioners failed to construct the property or discharge the liability of the loan. It is alleged that there is a threat of auction by the Bank from which loan was taken in the name of the complainant.

5. Petitioners filed the subject applications seeking anticipatory bail. On 11.09.2017, it was represented that the parties had entered into a settlement and some modalities were to be worked out.

Accordingly, this Court granted interim protection to the petitioners. Parties were also referred to mediation.

6. Mediation Settlement Agreement dated 06.11.2017 was executed. As per the settlement, the petitioners had assured the complainant that they shall abide by the One Time Settlement (OTS) entered into with the Bank and pay the settlement amount and after payment of the OTS amount, physical possession and title documents of the property would be got released from the Central Bank of India and handed over to the complainant and thereafter they shall seek for quashing of the subject FIR.

7. Learned counsel for the petitioners submits that the petitioners had other loan transactions with the Central Bank of India apart from the subject loan transaction and had entered into a composite OTS with the Bank for all the four loan accounts. Learned counsel for the petitioners submits that the petitioners had paid the settlement amount as per the OTS and had, in fact, as per his version, paid more than the OTS amount. He submits that the OTS was settled at Rs.2.75 crores and the petitioners had paid Rs.3.87 crores.

8. Learned counsel for the complainant submits that despite the settlement and the assurances given by the petitioners that the complainant's property would be got released from the Bank and the title papers handed over with 'no objection' from the Bank, the same has not been done and the bank had put the property of the

complainant for auction, however, no bids were been received.

9. Learned counsel for the complainant further submits that the petitioners have other assets which have been mortgaged with the Bank to secure the other loan transactions to which the complainant is not a party. She further submits that the petitioners have paid a substantial amount to the Bank in the other loan accounts and have not paid any amount in the loan account which is secured against the property of the complainant. It is submitted that the intention of the Petitioners is to have the complainant's property auctioned and secure their personal property.

10. Learned counsel appearing for the Central Bank, who was put to notice, has submitted that the OTS was a one-time offer, which was time bound and since the petitioners have failed to comply with the OTS, the same is lapsed and, as on date, Rs.105.532 lakhs are outstanding against the four loan accounts, to which the petitioners are the party. Learned counsel for the Central Bank further submits that the Bank is taking action in accordance with law and have already filed an original application before the Debt Recovery Tribunal, to which both the petitioners as well as the complainant are parties and are appearing.

11. Learned counsel for the petitioners submits that the petitioners have already approached the Debt Recovery Tribunal impugning the claim of the Bank as the Bank has not given due credit for the

amounts paid to the Bank.

12. Perusal of the record shows that the petitioners had given an assurance to the complainant that they shall have the loan account settled with the Central Bank and the property of the complainant released. The petitioners have failed to comply with the assurances given to the complainant and even abide by the Settlement Agreement, which is evident from the fact that the bank is proceeding further with the recovery of its dues and as per the learned counsel appearing for the Bank, Rs.105.532 lakhs are still outstanding against the petitioners. As per the Bank substantial amount if due in the loan accounts that are secured by the property of the complainant. It is stated that Petitioners have made part payments in other loan accounts which are secured by their personal property.

13. Petitioners were granted interim protection by this Court on 11.09.2017 on the assurance that they shall settle with the complainant and the petitioners have clearly failed to abide by the Settlement Agreement and they are clearly in breach of the settlement, I am of the view that the petitioners are no longer entitled to any indulgence by this Court. Accordingly, the interim protection granted to the petitioners by this Court by order dated 11.09.2017 is liable to be vacated.

14. The conduct of the Petitioners shows that while payments have been deposited by the petitioners with the bank, same has been

deposited against the loan accounts which are secured by their own property and payment has not been deposited against the loan accounts which are secured by the property of the complainant. This clearly shows that the petitioners have no intention of preserving the property of the complainants and have prima facie misled the complainant.

15. In view of the above, I find no merit in the petitions. The petitions are, accordingly, dismissed.

16. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

DECEMBER 20, 2018/st