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

Date of decision: 2nd August, 2018.

\+ **WRIT PETITION (CIVIL) 10522/2017 & CM No.43091/2017**

DEVENDER KAUR ..... Petitioner

Through : Mr.Mukesh Sharma with Mr.Manish, Advocates.

versus

PAUJAB AND SIND BANK AND ORS ..... Respondents

Through : Ms.Seema Gupta, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Devinder Kaur has filed the present writ petition impugning order dated 23rd October, 2017 in Appeal No.336/2017 titled *Smt.Devinder Kaur vs.Punjab & Sind Bank & Ors.* passed by the Debt Recovery Appellate Tribunal, Delhi ("Appellate Tribunal").

2. Devinder Kaur ("petitioner") had filed SA No.28/2011 before the Debt Recovery Tribunal ("DRT") under Sub-Section (1) of Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI

Act'), questioning and challenging initiation of action by the Punjab and Sindh Bank ("respondent bank") under Section 13(4) of the 'SARFAESI Act' in respect of property No.5A/1, measuring 520 Sqr Yds in Khasra No.66/24 situated at Udyog Nagar village Mundka, New Delhi("the property", for short).

3. As per the petitioner, Vipin Chopra/respondent No.4 had sold the property to Bhupinder Kumar Sabharwal vide registered Sale Deed dated 22.10.1999. Thereafter, the property was inherited by his wife Kanchan Sabharwal in terms of the registered Will dated 25.04.2008 on death of Bhupinder Kumar Sabharwal. Kanchan Sabharwal had transferred the property for consideration to the petitioner by executing general power of attorney, agreement to sell, affidavit etc. all dated 16.04.10. The petitioner had executed registered sale deed dated 2.5.2011 in favour of her husband Surjeet Singh.

4. The respondent bank claims that Vipin Chopra had mortgaged the property with the State Bank of Bikaner & Jaipur ("SBBJ") in 2003. In December 2008, respondent bank took over the said liability and rights from SBBJ.

5. The DRT by order dated 30.05.2017 dismissed and rejected the SA filed by the petitioner holding that Vipin Chopra and his wife had taken a loan from SBBJ by creating equitable mortgage in 2003 and that the mortgage was in accordance with law. Claim of the petitioner predicated on the Sale deed dated 22.10.1999 executed by Vipin Chopra in favour of Bhupinder Singh Sabharwal and the agreement to sell, power of attorney etc. executed on 16.04.2010 was not

sustainable in law. The SA was not dismissed on the ground that the petitioner (Devender Kaur) had executed Sale Deed dated 02.05.2011 in favour of her husband Surjeet Singh, and on transfer of the property, she did not have *locus standi* and that Surjeet Singh was a necessary and proper party.

6. This objection was raised in the Appellate Tribunal in Appeal No.336/2017 preferred by petitioner impugning the order dated 30.05.2017 passed by the DRT.

7. Appellate Tribunal by the impugned order dated 23rd October, 2017 dismissed the appeal filed by petitioner *in limine* relying on ***Suraj Lamp and Industries Pvt. Ltd. versus State of Haryana and Ors.*** AIR 2012 SC 206 and that petitioner was not entitled to pursue the litigation as she had ceased to be the owner. Contention that petitioner and her husband Surjeet Singh were "one and same" was rejected. Appellate Tribunal, it was observed, was not meant to adjudicate claims of those who do not have any interest in the property.

8. It is apparent that petitioner was not properly guided and informed that her husband Surjeet Singh should have been impleaded as a party. Moreover, petitioner being the power of attorney holder, who had executed the sale deed, had interest in contesting the proceedings initiated by respondent bank under the SARFAESI Act. Further, the petitioner was residing in the property.

9. The petitioner contends that the DRT had failed to consider the documents relied upon by the petitioner. As per the petitioner, Vipin Chopra could not have mortgaged the property with SBBJ in 2003 as

he had no title, having sold the property to Bhupinder Kumar Sabharwal in 1999. Thus, the decision of the DRT was contrary to law. Counsel for the respondent bank submits that documents relied upon by petitioner may not be genuine.

10. We have narrated the facts and the controversy in issue. Chain of documents relied upon by petitioner have been referred to, but we have not commented on merits as these have to be considered and examined by the Appellate Tribunal. However, we do feel and observe that the petitioner and her husband Surjeet Singh should not be denied hearing on merits on account of technical lapse and failure to understand the impact and legal effect execution of the sale deed dated 02.05.2011. They were misguided and did not have benefit of proper legal advice and assistance.

11. Accordingly, the impugned order is set aside and the matter is remanded to the Appellate Tribunal. The petitioner would file an application to implead her husband Surjeet Singh within a period of three weeks from today. Upon Surjeet Singh being impleaded as a party, the appeal would considered and decided on merits and in accordance with law.

12. Parties are directed to appear before the Appellate Tribunal on 27th August, 2018.

13. The writ petition is allowed in the aforesaid terms. We clarify that we have narrated the facts in order to dispose of the present writ petition. Correctness and truth has to be ascertained. Appellate Tribunal would decide the appeal on merits without being influenced

by observations made in this order. There would be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 02, 2018
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