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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.05.2018

\+ **W.P.(C) 11270/2015 & CM No.29457/2015 (Stay)**

CENTRAL BANK OF INDIA ..... Petitioner

Through: Mr. Jaswinder Singh, Advocate

versus

INDIAN BANK & ORS ..... Respondents

Through: Mr. Pradeep Dhaka, Advocate for R-1
Mr. U.N. Singh, Advocate for R-4

\+ **W.P.(C) 11298/2015 & CM No.29537/2015 (Stay)**

CENTRAL BANK OF INDIA ..... Petitioner

Through: Mr. Jaswinder Singh, Advocate

versus

PAWAN KUMAR AGGARWAL & ORS ..... Respondents

Through: Mr. U.N. Singh, Advocate for R-6
Mr. Pradeep Dhaka, Advocate for R-7

\+ **W.P.(C) 11322/2015 & CM No.29701/2015 (Stay)**

CENTRAL BANK OF INDIA ..... Petitioner

Through: Mr. Jaswinder Singh, Advocate

versus

VIJAYA BANK & ORS ..... Respondents

Through: Mr. Arun Dhir, Advocate for R-1
Mr. U.N. Singh, Advocate for R-2
Mr. Pradeep Dhaka, Advocate for R-4

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. In these writ petitions instituted on behalf of Central Bank of India, orders passed by the learned Debt Recovery Appellate Tribunal (for short 'DRAT') in inter-connected appeals being Appeal Nos.267/2015 in O.A. No.109/2011 (Delhi-II); Miscellaneous Appeal No.60/2015 in S.A. No.9/2011 (Delhi-II); I.A. No.597/2015 & 598/2015 and Inward No.352/2015 in O.A. No.182/2011 (Delhi-II) have been impugned.

2. The facts briefly encapsulated are that one Mr. Pawan Kumar Aggarwal was sanctioned a loan of `19 lakhs against the mortgage of the property bearing No.RZ-93B, H-37 and H-38, Street No.3, Sadh Nagar, Palam Colony, New Delhi (hereinafter referred to as 'the subject property') by Vijaya Bank on 16.10.2003.

3. In relation to the subject property, it was the case of Andhra Bank that they had granted a housing loan of `12 lakhs to Mr. Pawan Kumar Aggarwal and Smt. Mamta Aggarwal, who had created mortgage over the subject property with the said bank. Although a Written Statement had been filed on behalf of Andhra Bank, they did not choose to lead any evidence in the proceedings before the Debt Recovery Tribunal (for short 'DRT') and were proceeded *ex parte*. In this behalf, it is relevant to observe that there is no appearance on behalf of Andhra Bank despite service of notice before this Court either.

4. On behalf of the Indian Bank, it was asserted that they had sanctioned a home loan in the sum of `17 lakhs to Ms. Shakuntala Devi, Ms. Mamta Aggarwal, Mr. Vinod Kumar Aggarwal and Mr. Ratan Lal Aggarwal on 25.09.2003 and further granted an additional loan of `5 lakhs on 09.09.2004 in consideration of a mortgage executed in that behalf by the abovesaid four persons on 05.11.2003.

5. The appellant-Central Bank of India would urge that they had advanced a term loan of `26 lakhs on 16.05.2009 to Mr. Pawan Kumar Aggarwal and in consideration thereof, the subject property was mortgaged with them.

6. However, the learned DRT in the first instance and the learned DRAT in appeal returned a finding that Union Bank of India in whose favour Mr. Pawan Kumar Aggarwal, Ms. Mamta Aggarwal, Mr. Vinod Kumar Aggarwal and Mr. Ratan Lal Aggarwal had created an equitable mortgage on 14.07.2003 and subsequently on 19.07.2003, was legally entitled to foreclose and enforce this mortgage owing to the fact that the Union Bank of India having created a charge over the subject property, prior to the other banks, was granted priority for the recovery of its dues.

7. In this behalf, the Sale Deed dated 10.02.2003 executed by one Mr. Narsima Moorthi in favour of Mr. Pawan Kumar Aggarwal had been duly considered. It has further been found that all the other mortgages created by the named individuals in relation to the subject property have been subsequent thereto, and are resultantly not valid.

8. It is in this view of the matter that the learned DRAT held that the Union Bank of India would have the right to recover its dues prior to others.

9. This Court vide its order dated 07.12.2016 permitted the Union Bank of India to auction the subject property and keep the proceeds thereof, in a fixed deposit.

10. Learned counsel appearing on behalf of Union of India states that pursuant to the liberty granted, the subject property has been auctioned and a sale certificate in relation thereto, has been issued to the successful bidder. It is further stated that in terms of the collateral proceedings, the Andhra Bank has retained physical possession of the subject property.

11. Mr. Jaswinder Singh, learned counsel appearing on behalf of Central Bank of India would, therefore, urge that if any amounts are left over after the Union of India receives its debts in full, it would be appropriate if the same is disbursed in equal shares to the other banks which are also nationalized banks.

12. In view of the circumstance that the loan extended on behalf of the nationalized banks are public money, it is considered just and necessary to direct as follows:-

i) The Union Bank of India shall encash the proceeds of sale of the subject property kept in a fixed deposit receipt and after adjusting the amount owed to them, deposit the balance, if any, with the Registrar, DRAT within a period of one month from today.

ii) The learned DRAT shall disburse the balance amount, if and when so deposited, in equal shares, between the other nationalized banks, on an application being made by the latter in this behalf.

iii) The Andhra Bank, who are not represented before us, despite service of notice, are directed to hand over physical possession of the subject property to the Union Bank of India, forthwith.

13. With the above directions, the writ petitions are disposed of. All the pending applications also stand disposed of.

14. A copy of this order be given *dasti* under the signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 02, 2018
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