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

\+ **W.P.(C) 3636/2019 & CM Appl. No. 16658/2019 (stay) & 27795/2019 (early hearing)**

AMANDEEP SINGH & ANR ..... Petitioners

Through: Mr. Pallav Saxena & Mr. Puneet Verma, Advocates

versus

DENA BANK & ORS ..... Respondents

Through: Mr. Deepak Jain with Mr. Tanpreet Gulati & Mr. Ayush Acharjee, Advocates for Respondent No.1
Mr. Sanjeev Bhandari & Mr. Vipin Sehgal, Advocates for Respondents No.2 to 5
Mr. Karan Khanna & Mr. Abhishek Kumar Dwivedi, Advocates for Respondent No.8/Syndicate bank
Mr. O.P.Gaggar & Mr. Sachindra Karu, Advocates for Respondent No.9/Union Bank of India
Mr. Rajinder Wali, Advocate for Respondent No.10/PSB
Mr. V.K.Gupta, Advocate for Respondent No.11/Bank of Maharashtra
Mr. Santosh Kumar Pant & Mr. Pratap Chandra Rai, Advocates for Syndicate Bank, Union Bank and Bank of Maharashtra

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **23.08.2019**

1. This is a writ petition challenging an order dated 29th January, 2019 of the Debt Recovery Appellate Tribunal ('DRAT') in Misc. Appeal No. 254 of 2017 arising out of SA No. 122 of 2016 of DRT-II, Delhi.

2. The background to the present appeal is that the two Petitioners before this Court claim to be *bonafide* purchasers of four shops i.e. Shop Nos. 9, 10, 11 & 12 located at Village Ghondi in the *abadi* of DLF Colony, known as Krishna Nagar, Shahdara, Delhi-110051 from the Respondent No.1 Dena Bank, now known as Bank of Baroda-BOB, by a private treaty under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002).

3. It is stated that the above shops were put up for e-auction on 30th December, 2016 by the Respondent No.1 under the SARFAESI Act, 2002 but that the said auction failed for want of bids. An advertisement was thereafter published on 28th January, 2017 by Respondent No.1 again offering the shops for sale through e-auction, with the date of auction being fixed at 15th February, 2017.

4. The Petitioners claim to have participated in the above auction and submitted Earnest Money Deposits (EMDs). Meanwhile, in the proceedings before the Debt Recovery Tribunal-II (DRT-II), Delhi in SA No. 122/2016, titled "*Smt. Madhu Babbar and Ors. v. Dena Bank*", the above auction was stayed by the DRT-II by an order dated 14th February, 2017. It is stated that the EMDs received by Respondent No.1 were refunded to the auction

participants, consequent upon the abovementioned stay order.

5. Aggrieved by the stay granted by the DRT, the Respondent No.1 bank approached the Debt Recovery Appellate Tribunal (DRAT) by filing Misc. Appeal No. 254/2017. When the appeal came up first for hearing before the DRAT on 2nd June, 2017, it stayed the operation of the order dated 14th February, 2017 of the DRT. The appeal was fixed for hearing on 27th June, 2017.

6. While the appeal was still pending in the DRAT, it appears that the present Petitioners approached the Respondent No.1 seeking information about the shops. It is stated that Petitioner No.1 offered to purchase Shop Nos. 9 and 10 and Petitioner No. 2 offered to purchase Shop Nos. 11 and 12. On 29th June, 2017, Respondent No.1 apparently issued notices under the proviso to Rule 9 (1) of The Security Interest Enforcement Rules, 2002 ('SIER') informing the borrower, Mr. Dilip Kumar Sachdeva Respondent No.12, regarding the sale of the shops to the Petitioners "by private treaty."

7. It is stated that even while the appeal in the DRAT was pending on 20th July, 2017, the present two Petitioners purchased the following shops i.e. Shop No. 9 for 16 lakhs, Shop No. 10 for Rs. 17.60 lakhs, Shop No.11 for Rs.18.40 lakhs and Shop No. 12 for Rs. 20 lakhs. These prices were the reserved price fixed for the shops in the e-auction. The Petitioners also claimed that sale deeds were executed in their favour in respect of the above shops.

8. When the appeal was heard before the DRAT on 14th August, 2017, the above facts were brought to its notice. The DRAT issued notices to the Petitioners on that date asking them to show cause why the sales in their favour should not be declared void. On 15th January, 2018 the DRAT directed Respondent No.1 Bank to file an affidavit about the auction of the shops to the Petitioners by a private treaty.

9. It is thereafter that the impugned order has been passed by the DRAT, noting that the above sales of the four shops took place even while the appeal was pending before the DRAT. The DRAT observed that there was no justification as to why it was kept in the dark about the sale of the four shops after Respondent No.1 bank had obtained an interim order in its favour from the DRAT on 2nd June, 2017. The DRAT was of the view that the sale of the four shops was liable to be set aside "because that sale is a result of bank officials having abused the process of tribunal".

10. It appears that during the pendency of the proceedings in the DRAT, the Respondent No.1 bank deposited in the DRAT the amount of sale money received from the present Petitioners. The DRAT directed that the said amount would be released in favour of the two Petitioners by pre-maturely encashing the FDRs. This was asked to be done within two weeks.

11. Learned counsel for the Petitioners states that the Petitioners were not privy to any wrongdoing and that they were *bonafide* purchasers, who had parted with valuable money for buying the shops in question.

12. The Court finds that the DRAT has sufficiently protected the interests of the two Petitioners, since the Respondent No.1 bank was directed to deposit the money paid by the Petitioners for the four shops with the DRAT and the money was to be kept in an FDR. Further, a direction was issued in the impugned order that the money should be released to the two Petitioners.

13. Counsel for the Petitioner states that they had got demand drafts ('DDs') prepared for the sums obtained on encashing the aforementioned FDRs, but decided not to encash the DDs themselves, since the Petitioners had in the meanwhile approached this Court by way of the present petition. It is stated that during the pendency of the present petition, the Petitioners approached the DRAT for revalidation of the DDs, but by a communication dated 4th July, 2019 of the Section Officer of the DRAT, the said request of Petitioners was declined after noting the pendency of the present petition before this Court.

14. Having heard learned counsel for the parties, the Court is of the view that the DRAT was justified in coming to the conclusion that it had been overreached by the Respondent No.1 bank, which had resorted to selling four of the twelve shops to the present Petitioners by private treaty, even while the appeal by Respondent No.1 bank was pending before the DRAT. Indeed, the aforementioned sale of four of the twelve shops by private treaty had the inevitable effect of rendering the matter pending before the DRAT, insofar as it concerned the e-auction of the four shops, infructuous. That certainly was not anticipated by the DRAT when it passed the interim order

on 2nd June, 2017. Consequently, that portion of the impugned order of the DRAT invalidating the sale of the four shops to the present Petitioners calls for no interference.

15. At the same time, since the Petitioners should not be prejudiced by the cancellation of such sale, the Court directs that the DDs in favour of the two Petitioners for the sums obtained on the encashment of the FDRs will either get revalidated by the DRAT or fresh DDs will get prepared for the same sums again in favour of the two Petitioners, and the DDs will be released to them not later than two weeks from today.

16. The Court is of the view that the Appellate proceedings before the DRAT have now reached a logical conclusion by the impugned order and that further proceedings ought to now resume before the DRT.

17. In that view of the matter, the Court directs that the impugned order dated 29th January, 2019 of the DRAT will be taken to be the order disposing of the appeal and applications pending before it and those proceedings will now be treated as closed. The Court directs the proceedings before the DRT will re-commence from the stage at which they were when the DRT passed the order dated 14th February, 2017. The DRT will now proceed with the matter in accordance with law.

18. It is made clear that in the event that there is any public auction in the future of the twelve shops in question, it will be open to the two Petitioners

to participate in such public auction and that will be without prejudice to any of the orders passed by either the DRT, DRAT or of this Court in these proceedings.

19. The writ petition and the applications are disposed of in the above terms. A copy of the order be communicated forthwith to both the DRT concerned and the DRAT.

20. Copy of order be given *dasti* under the signature of the Court Master.

S.MURALIDHAR, J

TALWANT SINGH, J

AUGUST 23, 2019
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