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

\+ **W.P.(C) 4491/2019**

SANJEEV GUPTA & ANR ..... Petitioners
Through: Mr.Vineet Malhotra with Mr.Shubhendu Kaushik, Advocates.

versus

MURTI DEVI & ANR ..... Respondents
Through: Ms.Nishi Chaudhary, Advocate for R2 with Mr.Rajesh Kumar, Chief Manager.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **10.10.2019**

1. The two Petitioners, who were the joint purchasers of property No. E-131 falling in Khasra No.174, Village Mohd. Pur, New Delhi, admeasuring 100 sq.yds. (hereinafter 'property in question') in a public auction conducted by the Respondent No.2 Bank and for which a sale certificate was issued to them on 29th December 2015, have filed the present petition challenging an order dated 13th March, 2019 of the Debt Recovery Appellate Tribunal ('DRAT') to the extent that it has rejected the joint application being IA No.385 of 2018 moved by the Appellant before the DRAT i.e. Respondent No.1 in the present petition and the present Petitioners i.e. the auction purchasers praying for disposal of the appeal in terms of a settlement entered into between them. By the impugned judgment, the DRAT has further directed the Respondent No.2 Bank to refund the sum of Rs.1.25 crores deposited with it by Respondent No.1 as a condition for grant of stay of her

dispossession from the property in question during the pendency of the appeal.

2. The background facts are that the Respondent No.2 Bank sanctioned credit facilities to one M/s. Virgo Trading House, a sole proprietary concern of one Mr. Ankit Singla. As security, the said borrower mortgaged his own property at Lajpat Nagar, Panipat, Haryana. The guarantor Mr. Udai Bir Singh Tokas also mortgaged with the Respondent No.2 Bank the property in question which he projected as belonging to him. Upon the borrower defaulting, the Respondent No.2 Bank proceeded against him and the guarantor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) and issued a proclamation of sale notice on 14th June 2012 in respect of the property in question. The said notice was published in Hindi and English newspapers. It appears that at this stage the Bank was not in possession of the property in question. It was in the possession of the mother of Mr. Udai Bir Singh Tokas i.e. Respondent No.1 herein.

3. The admitted position is that the notice published by the Respondent No.2 Bank offering the property for sale through public auction did not clearly mention that the Bank was only in 'constructive' possession and not in 'actual' physical possession of the property in question. It transpired that the Bank only took 'symbolic' possession of the property in question on 19th March 2012.

4. Aggrieved by the proclamation of sale notice, Mr. Udai Bir Singh Tokas

filed a securitization application SA No.71 of 2012 before the DRT-1, Chandigarh which came to be dismissed on 10th July 2015. On 29th July, 2015 Respondent No.1 Murti Devi sent a notice to the Respondent No.2 Bank claiming that the property in question was not the property that was actually mortgaged with the Bank and that the property in question was her property.

5. Meanwhile, Mr. Udai Bir Singh Tokas filed Appeal No.177 of 2015 before the DRAT which came to be dismissed by the DRAT on 31st July 2015. Respondent No.1 filed a civil suit before the Civil Judge-02, Patiala House Courts, New Delhi which also came to be dismissed on 31st August 2015. She then filed SA No.171 of 2015 before the DRT for a direction that the property sought to be auctioned by Respondent No.2 Bank should be demarcated.

6. Even while the said application was pending, Respondent No.2 Bank proceeded with the auction of the property in question. The Petitioners were the successful bidders, and paid the offer amount of Rs.1.21 crores on 11th December, 2015. It is not in dispute that Respondent No.2 Bank on 29th December, 2015 issued a sale certificate in favour of the Petitioners. On 30th December, 2015, the Petitioners got the sale deed in respect of the property in question executed in their favour. The Petitioners state that they also paid an amount of Rs. 7.26 lakhs towards stamp duty and other charges.

7. On 8th February, 2016 Respondent No.2 Bank filed an application under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate

('CMM'), Patiala House Courts. An order was passed to take possession of the property in question. A receiver was also appointed by the CMM for that purpose.

8. It appears that Respondent No.1 filed an IA No.193 of 2016 before the DRT-1 in the pending SA No.171 of 2015, seeking demarcation of the property in question. The DRT-1 dismissed the said application on 22nd February 2016. However, the main SA itself was kept pending. By an order dated 26th December 2016, the present Petitioners were impleaded as parties to the said SA No.171 of 2015.

9. Meanwhile, on 28th March, 2016 the appeal filed by Respondent No.1 against the DRT's order dated 22nd February 2016 along with the pending applications therein came up for hearing before the DRAT and the following order was passed by the DRAT:

> "Reply filed by the auction purchaser. The counsel for the appellant states that the appellant has deposited a sum of Rs.1.25 crore. The counsel for the bank states that the bank has no objection in accepting this amount provided the appellant withdraws all the litigation. This prayer to redeem the property is strongly opposed by the auction purchaser. The counsel for the appellant has expressed his readiness to bear the expenses for retransferring of the property in the name of the appellant etc.
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> Adjourned to 22nd April, 2016 for arguments. *Status quo* with regard to the property in question to continue till next date of hearing."

10. According to the Petitioners, they were desperate to get possession of the

property in question, having parted with a sum of Rs.1.21 crores and having paid the stamp duty and registration charges. They apparently entered into a settlement with Respondent No.1 and filed a joint application being IA No.385 of 2018 before the DRAT. The terms of settlement were that Respondent No.1 would refund to the present Petitioners the sum of Rs.1.21 crores, with interest and costs while retaining possession of the property in question. When the said application was still pending in the DRAT, the Petitioners approached this Court by filing W.P. (C) 297 of 2019. The said petition was disposed of by a learned Single Judge of this Court by order dated 15th January 2019, paras 7 and 8 of which read as under:

> "7. It is pointed out that while the disputes are pending consideration before the Debt Recovery Appellate Tribunal (DRAT), the petitioners have entered into a settlement with respondent no.2 and an application regarding the said settlement is pending before the DRAT. This Court is informed that the said application was filed on 31.10.2018 and is now listed before the DRAT on 29.01.2019.
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> 8. This Court is not inclined to interfere with in the proceedings at this stage since the entire dispute is pending before the DRAT. In this view the present petition is disposed of by directing DRAT to consider the petitioners' contention as well as the joint application filed by the petitioners and respondent no.l and dispose of the same as expeditiously as possible and, in any event, within a period of two months from today."

11. Thereafter, the DRAT took up both the appeal of Respondent No.1 as well as the joint application IA No.365 of 2018 along with another IA No.193 of 2016 filed by the Respondent No.1 seeking demarcation of the property in question. Para 9 of the impugned order of the DRAT is the

operative portion and reads as under:

> "9. This Tribunal is, however, not persuaded to accept the aforesaid submissions of the learned counsel for the appellant. It is not the duty of Courts/Tribunals to collect evidence for the litigants approaching for some reliefs to establish their case. So, it is for the appellant here herself to establish that the Bank had violated any provision of the SARFAESI Act or that it was illegally going to take possession of a wrong property which was not its secured asset. Therefore, I do not find any merit in I.A. No. 193/2016 and the prayer of the appellant-security application for a direction to the patwari to come to her aid in establishing her case. Therefore, this appeal is dismissed. As far as the joint application No.385/2018 moved by the appellant and the auction purchasers with the prayers which I have already noticed is concerned the same is equally devoid of any merit. With the consent of the appellant and the auction purchasers, who are not even parties in this appeal and in fact not even before the DRT, the auction sale conducted by the Bank cannot be quashed and that too ignoring the opposition of the Bank that sale cannot be set aside just like that with the consent of a total stranger to the auction process inasmuch the appellant is not a defaulting borrower of the respondent Bank and the mortgagor, son of the appellant, has already lost his legal battle. Therefore, joint I.A. No.385/2018 is also rejected. Since the appellant had paid a sum of Rs.1.25.crores to the Bank as a condition for grant of stay by this Tribunal against her dispossession and consequent to which order of status quo she has continued to occupy and enjoy the property in respect of which she had sought interim relief she will be refunded the amount of Rs. 1.25 crores by the respondent Bank within a week. It is, however, clarified that this Tribunal has not gone into the merits of the case of either of the appellant or of the Bank and only the prayer of the appellant for a direction to the patwari for demarcation has been examined and rejected. The DRT will be at liberty to pass any final order in the S.A. after examining the pleadings and the evidence adduced by the parties."

12. Thus, it will be seen that DRAT while directing refund of the sum deposited by Respondent No.1 with the Bank, dismissed the joint application I.A. No. 385 of 2018 filed by the present Petitioners and Respondent No.1 for disposal of the appeal in terms of the settlement arrived at between them. The DRAT noted that the Bank opposed the said settlement on the ground that Respondent No.1, who was a stranger to the auction process could not enter into such a settlement with the Petitioners.

13. When the present petition was first heard by this Court on 29th April, 2019 notice was issued, returnable on 4th September, 2019. On the next date i.e. 4th September, 2019 Mr. Vineet Malhotra, learned counsel for the Petitioners, informed the Court that the Petitioners were not interested in the alternate prayer in the petition that they should be put in possession of the property in question. He pressed for the main prayers in the writ petition, viz., that the sum of Rs.1.21 crores paid by the Petitioners for the property in question purchased by them in the public auction should be returned to them and further that they should be reimbursed Rs.7.26 lacs paid towards stamp duty/registration charges together with interest.

14. In light of the submissions made by counsel for the Petitioners as well as counsel for the Respondent No.2 Bank, the following order was passed by this Court on 4th September 2019:

> "1. Learned counsel for the Respondent No.2 Bank needs time for instructions on
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> (i) Whether the Bank is prepared to refund to the Petitioners the sum of Rs.1.21 crores paid by them for the auction

> purchase of the property in question as well as Rs. 7,26,000/- paid towards stamp duty?
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> (ii) Whether the Bank is prepared to pay reasonable interest on the aforementioned sums from the date of their payment, i.e. 11th December, 2015 till the date of refund?
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> 2. List on 10th October, 2019."

15. Today when the matter was called out for hearing, Ms. Nishi Chaudhary, learned counsel for the Respondent No.2 Bank informed the Court that they were prepared to refund the sum together with the stamp duty charges in the event that the Petitioners were not able to put in possession of the property in question. She stated that the Respondent No.2 Bank was hopeful, having filed an application before the CMM, of possession of the property in question being restored to the Petitioners. She submitted that the Bank was restrained by the interim orders passed by the DRAT, them recovering possession of the property in question from Respondent No.1.

16. The Court is of the view that the Petitioners, being bona fide purchasers at an auction, cannot be continued to be denied refund of the amount paid by them nearly 4 years ago, particularly since possession of the property in question has not been handed over to them till date. It is no consolation to the Petitioners that the Respondent No.2 Bank is now making efforts to regain possession of the property in question, when in the first place it failed to clearly disclose in the sale proclamation notice, pursuant to which the auction took place, that it was only in 'symbolic' possession of the property in question and not actual physical possession thereof. It is doubtful that the

Petitioners would have readily parted with sum of Rs.1.21 crores had the Bank made a truthful disclosure of that fact at the outset.

17. The Court does not consider it necessary to examine whether the failure by the Respondent No.2 Bank to disclose in the sale proclamation notice that it was only in 'symbolic' possession of the property in question was deliberate. The Court finds no justification in the Respondent No.2 Bank continuing to retain the sum of Rs.1.21 crores paid by the Petitioners for the property in question, when the possession thereof is not with it and it is also not in a position to put the Petitioners in possession thereof. The uncertainty over whether the Respondent No.2 Bank would be able to get possession of the property in the near future compounds the problem further. Understandably, therefore, the Petitioners are not prepared to wait any longer for the return of their money.

18. In that view of the matter, the Court directs as follows:

(i) The two Petitioners as well as an authorised representative of the Respondent No.2 Bank will appear before the office of the Sub-Registrar, SR-VII A, Sarojini Nagar, New Delhi on 16th October, 2019 at 11:00 am together with a certified copy of this order, and with the original of the sale deed dated 30th December, 2015 and the sale certificate dated 29th December, 2015 issued by the Respondent No.2 Bank in favour of the Petitioners in respect of the property in question.

(ii) The authorised representative of Respondent No.2 Bank will be present before the Sub-Registrar on the aforementioned date and time, together with a demand draft for the aggregate sum of Rs.1.21 crores + Rs.7.26 lakh and a sum equivalent to the simple interest @ 6% per annum on the aforementioned sum of Rs.1.21 crores from 30th December, 2015 till 15th October, 2019 favouring Petitioner No.2.

(iii) On the strength of this order, the Sub-Registrar will, simultaneous with the Bank handing over the aforementioned demand draft to Petitioner No.2, endorse the cancellation of both the sale deed as well as the sale certificate on the original documents. The Sub-Registrar will retain the original cancelled sale deed with him and hand over the cancelled sale certificate to the authorized representative of the Respondent No.2 Bank. The Sub-Registrar will make the necessary entries in the records maintained by him to the above effect.

19. The petition is disposed of in the above terms.

20. Order *dasti* to the parties under signature of the Court Master/Private Secretary. A certified copy of this order be delivered to the Sub-Registrar, SR-VII A, Sarojini Nagar, New Delhi by a Special Messenger forthwith for compliance.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 10, 2019/tr