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

\+ **Date of Decision: 31.05.2019**

% **W.P.(C.) No. 6546/2019**

DARAYUS NARIMAN & ANR. ..... Petitioners

Through: Mr. Pallav Saxena, Mr. Varun Kumar, Ms. Avshreya P.S.Rudy, and Mr. H.M.S.Rawat, Advocates.

Versus

ORIENTAL BANK OF COMMERCE & ORS. .....Respondents

Through: Mr. Mahesh K. Chaudhary and Ms. Sushmita Chaudhary, Advocates for R-1. (OBC)

**W.P.(C.) No. 6638/2019**

DARAYUS NARIMAN & ANR. ..... Petitioners

Through: Mr. Pallav Saxena, Mr. Varun Kumar, Ms. Avshreya P.S.Rudy, and Mr. H.M.S.Rawat, Advocates.

Versus

ORIENTAL BANK OF COMMERCE & ORS. .....Respondents

Through: Mr. Mahesh K. Chaudhary and Ms. Sushmita Chaudhary, Advocates for R-1. (OBC)

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**
**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**VIPIN SANGHI, J. (ORAL)**

**CM No.27711/2019 in W.P.(C) No.6546/2019**
**CM No.28050/2019 in W.P.(C) No.6638/2019**

Exemptions allowed subject to just exceptions.

The applications stand disposed of.

**W.P.(C.) No. 6546/2019 & CM No.27710/2019**
**W.P.(C) No. 6638/2019 & CM No. 28049/2019**

1. Issue notice. Counsel for the respondent no.1 accepts notice.

2. In view of the order that we propose to pass, we do not consider it necessary to issue notice to the other respondents.

3. The petitioners are aggrieved by the order dated 27.5.2019 passed by the learned Debt Recovery Appellate Tribunal in Misc. Appeal No. 121/2019 arising out of Appeal No. 6/2019. The said appeal had been preferred by the petitioners, being aggrieved by the order dated 27.2.2019 passed by the DRAT-III, Delhi.

4. The petitioners claim to have entered into an Agreement to Sell with the owners/debtors i.e. respondents no. 3 and 8, against whom respondent no.1-bank had initiated the Original Application to claim recovery of debts due to it. The Original Application was allowed and a recovery certificate was issued against the debtors. The property bearing no. 127-A, Central Avenue, Sainik Farms, New Delhi in respect whereof the petitioners claimed to be the agreement purchasers, was a property mortgaged to secure the loan obtained by the debtors. With a view to effect recovery, the Recovery Officer was appointed by the DRT, who took possession of the said property from the petitioners on 28.01.2019.

5. With a view to secure its interest under its alleged agreement to sell, the petitioners deposited the entire amount claimed by the respondent-bank under the recovery certificate. Thus, so far as the claim of the respondent-bank is concerned, the same stands completely satisfied.

6. There are inter se disputes between the petitioners and the original

owners, in respect whereof the petitioners claim for specific performance of agreement to sell, as well as the suit of the owners to claim cancellation thereof, are pending.

7. On 27.2.2019, the Debt Recovery Tribunal passed an order, which shows that the Tribunal is examining the statement of account filed by the respondent-bank with regard to the quantification of the liability of the borrowers. That order was assailed before the Ld. DRAT by the petitioners. The learned DRAT while passing the impugned order has remanded back the proceedings to the DRT and directed that since the petitioners have settled the claim of the bank, further proceedings towards sale of the property in question be stayed. However, no direction has been issued with regard to the delivery of possession of the property to the petitioners, despite the fact that the respondent-bank has made a statement that its claim stands satisfied and the possession of the property was taken by the Recovery Officer from the petitioner.

8. Learned counsel further submits that in the proceedings before the DRT in the SA, the respondent-bank had agreed to deposit the title deeds in this Court.

9. Since the admitted position is that the possession of the said property was with the petitioners before it was taken over by the Recovery Officer; the possession of the said property was taken over by the Recovery Officer only with a view to proceed with the auction sale of the said property; the respondent-bank has stated that its claim is fully satisfied meaning thereby that the auction sale of the said property is no longer required to be undertaken, there was no purpose in allowing the possession of the property

to remain with the Recovery Officer. In our view, the DRAT should have directed the same to be restored to the petitioners since the same was taken from the petitioners.

10. Accordingly, we dispose of this petition with a direction to the Recovery Officer to forthwith deliver the possession of the property to the petitioners. The respondent-bank shall deposit the original title deeds relating to the property in the suit and the counter-claim proceedings which are pending in this Court, and the release of the said title deeds shall abide by the decision in the suit/counter-claim.

11. The aforesaid direction is agreeable to the respondent-bank, and in our view, there is no prejudice caused to the other respondents/ owners, since merely the *status quo ante* has been restored as it existed before the Recovery Officer took over the possession of the property from the petitioners. The rights/claims of the petitioners and the owners i.e. Respondent Nos. 3 and 8 in the respect of the said property are preserved.

12. The petition stands disposed of.

**W.P.(C.) No. 6638/2019**

This petition stands disposed of in terms of our orders passed in W.P.(C) 6546/2019.

Dasti.

**VIPIN SANGHI, J.**

**RAJNISH BHATNAGAR, J.**

**MAY 31, 2019**
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