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

+ **Date of Decision: 31.7.2019**

% **W.P.(C.) No. 8313/2019 & CM 34430/2019**

SHALINI KHANNA

..... Petitioners

Through: Mr. Rajiv Bansal, Sr. Adv. With Mr. Hrishikesh Baruah, Ms. Radhika, Ms. Parul Panthi, Ms. Shweta Saini and Mr. Anant Nigam, Advocates.

Versus

BANK OF BARODA & ORS.

.....Respondents

Through: Mr. R.P.Agrawal, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

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 direct issuance of notice to the respondents No.2 to 5.
3. The petitioner has assailed the order dated 29.5.2019 passed by the Debts Recovery Appellate Tribunal, Delhi in Appeal No. 468/2017 arising out of OA No.295/2014 (DRT-II, Delhi). The said appeal has been preferred by the respondent-Bank of Baroda. The Original Application No. 295/2014 preferred by the respondent no.1 has been allowed by the DRT vide order dated 12.10.2017. The petitioner herein is defendant no.5 in the said Original Application. So far as the petitioner is concerned, DRT has held

that the mortgage of the property of the petitioner herein was not valid. However, she has been found jointly and severely liable along with the defendant nos. 1 to 4 to the extent of Rs.2,95,74,316/- along with simple *pendente lite* and future interest at the rate of 12% per annum from the date of filing of the original application, till realization.

4. The appeal preferred by the respondent no.1-bank is limited to the finding returned by the DRT in favour of the petitioner herein, that the mortgage created by her was not valid.

5. In pursuance of the order dated 12.10.2017, the recovery certificate was issued. The recovery certificate, however, is only in respect of defendant nos. 1 to 4/Certified Debtors No. 1 to 4. There is no mention of the petitioner in the said recovery certificate. The respondent no.1-bank moved M.A No. 28/2018 to seek correction of the recovery certificate. The Presiding Officer DRT-II dismissed the said M.A by observing that vide final order dated 12.10.2017, the claim of the applicant-bank against the defendant no.5 was rejected. It goes without saying that while passing the order dated 3.1.2019 in M.A.No. 28/2018, the Presiding Officer did not even bother to apply his mind, and to read his own order dated 12.10.2017. The said order is therefore completely mindless and cannot stand scrutiny even for a moment.

6. In the pending appeal preferred by the respondent no.1-bank, the respondent no.1 moved an application for appointment of a receiver in respect of the property of the petitioner, in respect whereof the mortgage has

been found by the DRT to be not valid. While dealing with the said application the learned DRAT has passed the following order:-

“The applicant bank has sought appointment of the receiver in respect of the property in dispute owned by CD 5 Ms. Shalini Khana against whom Ld. Presiding Officer held in the impugned order that she has liability to pay Rs.2974316/- along with interest at the rate of 20% per annum from filing of the O.A till realization. The grievance of the appellant is that the Recovery Officer to whom the recovery certificate was forwarded is not entertaining the request to proceed against the respondent no.5 herein for execution of the decretal amount on the ground that in the formal recovery certificate which is signed by the Ld. Presiding Officer, name of Ms. Shalini Khanna, CD is not mentioned. The Ld. Counsel for the respondent No.5 says that bank has not approached to DRT with any application, in this regard and so, this Tribunal should not go into this controversy in the present appeal. Counsel for the appellant contradicted this submission saying that he has moved an application for proceeding against respondent no.5 before the Recovery Officer, but it has been dismissed on the ground that the recovery certificate had not been issued in tune with the final order in the O.A.

Counsel for the appellant says a review petition has been filed before the DRT and same is under consideration. It appears that unnecessary matter is being getting delayed in the DRT simply for correction of a simple error in the recovery certificate.

To avoid, any further delay and as there is no dispute that there is in fact money decree against the respondent no.5. It is ordered that the recovery certificate issued by the DRT would now stand amended by including name of respondent no.5 therein as a CD.

The Registrar of DRT will carry out necessary correction in the recovery certificate. After necessary correction amended recovery certificate shall be forwarded to the Recovery Officer. In view of this order by this Tribunal the review petition filed by the petitioner bank would stand disposed of.

For further hearing re-notify on 22.07.2019. In the meanwhile, the Registrar of DRT shall submit a report that necessary correction in the recovery certificate has been made as aforesaid and amended certificate has been forwarded to the Recovery Officer concerned.”

7. From the above, it would be seen that though the respondent no.1-bank moved an application for appointment of a receiver in respect of the property of the petitioner, no order appointing receiver has yet been passed. The DRAT took note of the grievance of the respondent no.1-bank that the recovery officer is not entertaining the request of the respondent no.1-bank to proceed against the petitioner herein, since the formal recovery certificate does not make a mention of CD No.5 i.e the petitioner herein. The learned DRAT has, therefore, directed the Registrar of the DRT to carry out necessary correction in the recovery certificate, and after carrying out the same, the same has been directed to be forwarded to the recovery officer.

8. Having heard the learned Senior counsel for the petitioner as well as the learned counsel for the respondent no.1, we are not inclined to interfere with the impugned order, since all that has done by the DRAT is to direct correction in the recovery certificate which, obviously, is not in accordance with the order dated 12.10.2017 passed in the Original Application. The petitioner also does not dispute the fact that the order dated 12.10.2017 fixes the liability of the petitioner, as aforesaid, to the tune of Rs.2,95,74,316/- with simple interest *pendente lite* and future at the rate of 12% per annum from the date of filing of the Original Application till realization, jointly and severally with defendant nos. 1 to 4. The petitioner has preferred an appeal against the order dated 12.10.2017, but that does not take away the fact that

the order dated 12.10.2017-which stands, and has not been stayed, makes the petitioner liable as aforesaid. It is obvious that the recovery certificate erroneously did not make a mention of the petitioner as Certified Debtor no.5.

9. On our query to the learned counsel for the respondent no.1, as to how the respondent no.1 could seek appointment of the receiver in respect of the property of the petitioner, when the appeal preferred by the respondent-bank is still pending consideration against the order dated 12.10.2017, wherein the petitioner has been granted partial relief taken note of hereinabove, counsel for the respondent no.1 fairly does not dispute the position that till the respondent's appeal pending before the DRAT is allowed, no such receiver could be appointed on the premise that the said property was mortgaged. He submits that the petitioner was endeavoring to sell her property. Mr. Bansal states that no such endeavor was sought to be made. He states that there is an interim injunction operating against the petitioner.

10. We, therefore, dispose of this petition by clarifying that the petitioner shall not deal with the property in question till the appeal preferred by the respondent-bank is disposed of. We also make it clear that the above may not be read as a limitation on the right of the respondent bank to seek appointment of receiver *dehors* the mortgage, if the respondent makes out a case for such appointment in accordance with law.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 31, 2019/ib/jitender