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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9434/2019

AARTI FABRICOTT PVT LTD

..... Petitioner

Through: Mr V.K. Ohri and Mr Rudra Pratap,
Advocates.

versus

FEDERAL BANK LTD & ORS

..... Respondents

Through: Mr Joby P. Varghese, Advocate for
R-1.
Mr Atul T.N, Advocate for R-2&3.
Mr Arun Malik, Advocate for R-4 to
7.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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30.08.2019

CM 38819/2019 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 9434/2019

2.The Petitioner, who claims to be the bonafide purchaser of the ground floor and the basement of the property at 3/3, East Patel Nagar, New Delhi is before this Court assailing an order dated 29th July, 2019 passed by the Debt Recovery Appellate Tribunal ('DRAT') dismissing the Petitioner's appeal, which is directed against an order dated 26th March, 2018 whereby an earlier OA No.1030/2016 filed by the Respondent No.1 Bank before the Debt Recovery Tribunal-II ('DRT-II') disposed of as compromised by an order

dated 15th July, 2017, was restored to the file of the DRT-II.

3. By the aforementioned order dated 15th July, 2017, the DRT-II disposed of the said OA, recording a settlement arrived at between the parties. One of the terms of the settlement required the present Petitioner to make a payment of Rs.6.75 crores to the Respondent No.1 bank by 25th September, 2017. Admittedly, that condition was not complied with since only a part payment was made, leading the Respondent No.1 bank to file MA No.23/2018 before the DRT-II seeking the revival of aforementioned OA No.1030/2016.

4. The said MA No.23/2018 was disposed of by the DRT-II by the order dated 26th March, 2018, which reads as under:

“Present-. Sh Joby, P., Varghese. and Sh. Shahid, counsel for the applicant, in MA.

Sh. Atul T; N; & Sh. Harsh Raghuvanshi, counsel for the defendant no. 1 & 2.

Sh. Rudhra-Pratap Singh, counsel for the defendant no.7.

MA No.23/18

This, is a Misc. Application filed by the applicant bank seeking, restoration of the OA NO. 1030/16.

Heard the counsel for the applicant in M/V applicant bank and in view of no objections submitted by the counsel for the defendants, MA No. 23/18 is allowed with direction to restore the OA No.1030/16.

OA No. 1030/16 is hereby, restored.

Posted to 12.04.2018.”

5. By the impugned order, the DRAT has declined to entertain the appeal on

the short ground that under Section 20 (2) of the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act'), no appeal lies to the DRAT "from an order made by a Tribunal with the consent of the parties".

6. Learned counsel for the Petitioner contends that the aforementioned order dated 26th March, 2018 of the DRT-II is without jurisdiction, as the DRT-II does not have the power to recall an earlier order passed by it, even with the consent of the parties.

7. With the admitted position being that the Petitioner did not comply with one of the essential terms of settlement i.e. making the payment of Rs.6.75 crores in full, on or before 25th September, 2017, the inevitable consequence was that the settlement did not work out and the OA had to be revived. Consequently, this Court is not inclined to entertain the above plea of the Petitioner about the order dated 26th March, 2018 passed by the DRT-II, not being in accordance with law.

8. Learned counsel for the Respondent No.1 Bank submitted that the Petitioner has made an offer to pay the 'delayed payment interest', which the bank is considering. There are serious objections raised by learned counsel appearing for Respondent Nos. 2 and 3 i.e. the principal borrower to the above settlement. He contends that the alleged sale of the property in question in favour of the Petitioner itself is invalid. Learned counsel appearing on behalf of the Respondent Nos. 4 to 7, on the other hand, seeks to sustain the sale saying that it was validly made.

9. The Court, at this stage, is not called upon to express its view on any of

the above submissions. It will be open to all the parties to raise their respective contentions before the DRT-II, before whom the aforementioned OA No.1030/2016 is stated to be listed for hearing on 9th September, 2019. It is for the DRT-II to consider those submissions in accordance with law and pass appropriate orders.

10. The writ petition is dismissed with above observations. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 30, 2019

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