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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 12912/2019**

STATE BANK OF INDIA ..... Petitioner
Through: Mr Siddharth Sangal, Advocate.

versus

VINOD AGGARWAL AND ANR. ..... Respondents
Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>
% **09.12.2019**

<u>CM APPL. 52711/2019 (exemption)</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 12912/2019 & CM APPL. 52710/2019 (interim stay)</u>

2. The challenge in the present petition is to an order dated 31st May, 2019, passed by the Debt Recovery Appellate Tribunal ('DRAT'), allowing Appeal No.503/2016, filed by the two Respondents herein.

3. Admittedly, the two Respondents herein are the bona fide purchasers of the property in question from one Smt. Champa Garg, who herself purchased the said property by way of a sale deed executed in her favour by the Registrar of the DRAT, pursuant to the orders passed in earlier proceedings for recovery of the dues of the original borrowers instituted by the present Petitioner

4.The facts which weighed with the DRAT, leading it to pass the impugned order, lifting the attachment of the property in question at the instance of the Respondents herein, is set out in para 12 of the impugned order, which reads thus:

> "12. From a reading of impugned the orders of the learned recovery officer and the learned Presiding Officer in the present case which have already been extracted one thing becomes clear that the property in dispute which was attached by the recovery officer vide his order dated 26.11.2013 did not belong to any of the CDs/defaulters. Vide registered sale deed executed the same stood purchased by the appellants/objectors in 2010 from Bharat Garg in whose favour his grandmother Smt. Champa Garg, who had purchased the same pursuant to the order dated 30.10.2.016 passed by DRAT in an appeal which was filed by Bank of Rajasthan against final order passed by ORT in its O.A. against its borrowers including late Hans Raj Garg, original owner of the property in dispute. The learned recovery officer and the learned Presiding Officer have virtually set aside the order of the appellate Tribunal dated 30.10.2016 in the appeal of Bank of Rajasthan whereby the matter was disposed of by way of a compromise between the CH Bank of that case and the borrowers pursuant to which· the property in dispute was sold to Smt. Champa Garg. The sale deed was executed in her favor by none other than the Registrar of this Tribunal. That sale deed, consequent upon execution of which by the Registrar of this Tribunal, late Hans Raj Garg had ceased to have any right in that property, was not challenged on any ground by anyone including State Bank of Bikaner and Jaipur, respondent no. 1 herein, even after coming to know that the property in dispute stood sold firstly by way of execution of a sale deed in favour of Smt. Champa Garg and then its further transfer by way of gift by Smt. Champa Garg in favour of her grandson by a registered gift deed. Bharat Garg had then sold the property in dispute to the present two appellants/objectors. Even that transaction of sale was not challenged by the CH Bank of the present case, respondent no.l herein, as being void for the reasons put forth before the recovery officer in response to the objections of the appellants/objectors. The learned

recovery officer could not have legally passed an order declaring the sale in favour of Smt. Champa Garg and the sale in favour of the appellants/objectors as void. Similarly the learned Presiding Officer could not have put a seal of approval over the order of his recovery officer in appeal filed by te objectors. The recovery officer was not sitting in appeal over the order of the DRT pursuant to which the property in dispute which was in any case mortgaged in favour of Bank of Rajasthan, sold as a mortgaged property."

5. Learned counsel for the Petitioner sought to place reliance on the judgment of the Supreme Court in ***K. Basavarajappa v Tax Recovery Commissioner, Bangalore (1996) 11 SCC 652***, in which the sale of the property and the proceedings subsequent thereto, were sought to be set aside, on the ground that the sale was hit by Rule 16 (2) of the Second Schedule to the Income Tax Act, 1961

6. Having examined the said judgment, the Court is of the view that it arose in a different set of facts altogether distinguishable from the facts hereinbefore, which speak for itself.

7. There is no error in the impugned order of the DRAT, which calls for interference. The petition is accordingly dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J

DECEMBER 09, 2019
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