$~

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

24

\+ **W.P.(C) 13609/2019**

G R MALHOTRA AND ANR. ..... Petitioners

Through: Mr Rajeeve Mehra, Senior Advocate with Ms Niti Arora, Advocates.

versus

CANARA BANK AND ORS. ..... Respondents

Through: Ms Seema Gupta, Advocate for R-1.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **23.12.2019**

<u>CM 55017/2019 (exemption)</u>

1.Allowed, subject to all just exceptions.

<u>W.P.(C) 13609/2019 & CM 55016/2019 (stay)</u>

2. At the oral request of learned senior counsel for the Petitioners, the names of the Respondent Nos.2,3 and 4 are deleted from the array of parties.

3.Notice. Notice is accepted by learned counsel for the Respondent No.1 bank.

4. The short point involved in the present petition, which is whether the Petitioners, who claimed to be third party bonafide purchasers of the property, are entitled to cross examine before the Debt Recovery Tribunal – I ('DRT-I'), in SA No.61 of 2008, the deponent of an affidavit of a witness of the Respondent Bank.

5. It should be noted at the outset that this is the fifth time that the

Petitioners are approaching this Court for reliefs against the orders of the Debt Recovery Appellate Tribunal ('DRAT').

6. Without discussing all the orders passed earlier by the DRAT, it is sufficient to note that on 6th May, 2015, while allowing W.P.(C) No.3459/2011, filed by these very Petitioners, this Court noted that even on an earlier occasion i.e. 10th November, 2010, this Court "observed that serious triable issues existed, which had to be gone into by the DRT.

7. Learned counsel for the Bank vehemently opposes the Petitioners' prayer to cross examine the bank's witness by relying on a judgment of this Court dated 3rd February, 2017 in W.P.(C) No. 412/2015 (***M/s Dimpy S. Creations v Bank of Baroda***), and in particular para 15 thereof, by contending that there was no inherent right to cross examine a witness before the DRT.

8. While as a board proposition this may be correct, in the peculiar facts of the present case, where the bank's official one Shri Ravinder Bhatia, who has granted the enhancement of credit limits, is facing criminal charges, the Petitioners have in that context, explained in their IA No.125/2015 in SA No.61/2008, before the DRT, as to why they should not be permitted to cross examine the bank's witness one Shri Prabhakar Rao.

9. Learned counsel for the Respondent bank points out that Shri Prabhakar Rao, who was at the relevant point of time the Chief Manager of Karol Bagh Branch of the bank, has since superannuated. Be that as it may, since the said officer has submitted the affidavit, on the basis of the records of the

bank, he should be available for cross-examination, notwithstanding that he may have been superannuated.

10. The Court sees no difficulty in the said witness being produced on a date and his cross-examination being concluded in a time-bound manner, either on that date itself or on the next date, as may be fixed by the DRT.

11. In that view of the matter, the order dated 7th March, 2016 passed by the DRT, rejecting IA No.125/2015 and the impugned order of the DRT dated 10th December, 2019, dismissing the Petitioners' Misc. Appeal No.171/2016 filed against the said order are hereby set aside. The SA No.61/2008 is directed to be listed before the DRT for directions on 9th January, 2020. It will be open to the Petitioners to request the DRT to have the witness cross examine before the Local Commissioner, in the event that there is a paucity of time available with the DRT.

12. The petition is disposed of in above terms. Pending application is also disposed of. No costs.

S.MURALIDHAR, J

TALWANT SINGH, J

DECEMBER 23, 2019/*rd*