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

+ **W.P.(C) 13200/2018 and C.M.No.51255/2018 (Stay)**

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..... Petitioner

Through: Mr.Rajeeve Mehra, Senior Advocate
with Ms.Niti A. Sachar and Mr.
Ratnesh Sharma, Advocates.

versus

ORIENTAL BANK OF COMMERCE AND ORS. Respondents

Through: Mr.S.A.Khan, Advocate for the Bank.
Mr.Ravinder Kumar Yadav and
Mr.Vinayak Sharma, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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16.09.2019

1. The present petition is directed against the order dated 3rd December, 2018 passed by the Debt Recovery Appellate Tribunal (DRAT) dismissing the Appeal No. 229/2018 filed by the Petitioner.

2. The above appeal before the DRAT was directed against an order dated 16th May, 2018 which was passed by the Debt Recovery Tribunal-III (DRT), whereby the prayer of the Petitioner for grant of interim stay of an order dated 27th April, 2018 passed by the Recovery Officer (RO) in R.C. No. 227/2015 was rejected.

3. The Petitioner had filed objections before the RO under Rule 11 of the

rules framed under the Second Schedule to the Income Tax Act. As a result of the failure of the DRT to grant a stay, the Petitioner was in the danger of losing possession of the MIG Flat No. 432, 3rd Floor, Block-B, Shalimar Bagh (hereafter 'the property in question') which she claimed to be in her possession as lawful owner since August, 2004. In the proceedings under the Recovery of Debts to Banks and Financial Institution Act, 1993 (RDBFI Act), the property in question was put to sale through public auction and purchased by Respondent No. 4. It is stated that the Respondent No. 4 had consequently deposited Rs.38.94 Lakhs with the Respondent No. 1/Bank.

4. The scope of the appeal before DRAT was confined to the question of whether the DRT, before whom the appeal against the order of the RO was filed, was justified in declining to pass any interim order in favour of the present Petitioner?

5. However, the Court finds that in the impugned order, the DRAT has examined the merits and dismissed the appeal of the Petitioner, thereby rendering the appeal before the DRT infructuous.

6. Learned counsel for the Respondents urged that since there have been earlier rounds of litigation involving the present Petitioner, the DRAT was justified in dismissing the Petitioner's appeal on merits, without confining itself to the question of grant of an interim stay during the pendency of the appeal before the DRT. According to the Respondents, the Petitioner is a 'rank trespasser' vis-a-vis the property in question and that, therefore, even

this Court should not remand it back to the DRT, but decide the present petition on merits.

7. The court is not inclined to accept the above submission of the Respondents for the simple reason that, admittedly, the Petitioner's appeal against the order of the RO is still pending before the DRT. The DRT is the appellate authority in relation to such an order and has had no occasion to deal with the merits of the appeal. The only question before the DRT when it passed the order dated 10th May, 2018 was whether there was any case made out by the present Petitioner for grant of an interim stay of dispossession. Even if it is accepted that the Petitioner had to demonstrate a *prima facie* case for grant of interim relief in her favour, the fact remains that in the proceedings before the DRT at that stage, the DRT was not considering the merits of the appeal itself.

8. Mr. Rajeev Mehra learned senior counsel appearing for Petitioner informs the Court that the Petitioner has already, during the pendency of the matter before the DRT and DRAT deposited Rs.18.5 Lakhs and that therefore it cannot be said that the Petitioner's claim was not bonafide.

9. Without expressing any view on the submissions of the parties, this Court is of the view that notwithstanding that the DRAT may have discussed the merits of the matter while dismissing the appeal of the Petitioner by the impugned order, the scope of the proceedings before the DRAT was limited to examining whether the Petitioner had made out a case for interim relief.

Inasmuch as the DRAT has travelled far beyond that question and discussed the entire merits of the matter, thereby rendering the appeal pending before the DRT redundant, the impugned order of the DRAT cannot be sustained and is vulnerable to being set aside.

10. The Court notes that this Court at the very first hearing of the present petition on 6th December, 2018 considered it appropriate to direct status quo to be maintained with regard to the possession of the property in question. That interim order continued has since then.

11. In the circumstances, the Court sets aside the impugned orders dated 16th May 2018 of the DRT and 3rd December 2018 of the DRAT and considers it appropriate to direct that the interim order dated 6th December, 2018 passed by this Court in the present petition will continue till the disposal by the DRT of the appeal pending before it filed by the present Petitioner against the order dated 27th April, 2018 of the RO.

12. Considering that the auction purchaser had deposited the money way back in 2016, the Court considers it appropriate to direct the DRT to dispose of the appeal pending before it on or before 15th November, 2019. All the contentions of the parties are left open to be urged before the DRT, which will consider those submissions while disposing of the appeal on merits uninfluenced by its previous order dated 27th April 2019, or by any observations of the DRAT in the impugned order.

13. The Bank is permitted to file its reply before the DRT within ten days. The appeal before the DRT will be listed for directions on 1st October, 2019.

14. The petition and the application are disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 16, 2019

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