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

Date of Decision:- 18.01.2021

\+ W.P.(C) 11078/2020 & C.M.No.34637/2020

MAJOR SINGH SIDHU ..... Petitioner

Through Mr.Vishwendra Verma with Ms.Prithika Kashyap, Advs.

versus

INDIAN BANK AND ORS ..... Respondent

Through Mr.Harshit Jain, Adv for R-1.
Mr.Vipin Singh, Adv for R-3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The present petition assails the order dated 14.12.2020 passed by the DRAT, whereby the petitioners' appeal assailing the DRT's order dated 24.09.2020 which rejected its S.A. (SARFAESI Application), has been dismissed. Under the impugned order, the DRAT, while dismissing the petitioners' appeal, has granted them three months' time to surrender possession of the property in their occupation to the respondent no.1/bank.

2. The petitioner /Major Singh Sidhu, represented by his legal heirs in the present petition, approached the DRT by way of an application under Section 17 of the SARFAESI Act being SA No.726/2011 on 16.12.2011

impugning notice dated 05.02.2008 issued by the respondent no.1/bank to Shri Parmanand Jha/respondent no.2. In the said S.A., the possession notices dated 08.11.2011 and 28.11.2011 were also assailed and it was prayed before the DRT that the bank be directed to accept the payments made by the petitioner towards the outstanding dues of respondent no.2/the borrower. The case set up by the petitioner before the DRT was that he was a *bonafide* purchaser of property bearing no. B-39, HIG Flat, 3rd Floor, Dilshad Extension, Delhi, having purchased the same for a consideration of Rs.12 lakhs from respondent no.2 by way of registered power of attorney dated 30.12.2004. It was his case that though he was in possession of the subject property ever since the date of purchase, he had not received any notice either from respondent no.1/bank or from respondent no.2 till November, 2011 and in fact, for the very first time on 18.11.2011, upon return from an outstation visit, he found a possession notice dated 08.11.2011 lying in the subject property. It is only then that he learnt that the borrower/respondent no.2 had mortgaged the subject property to respondent no.1 in order to secure the repayment of the loan availed by him in the year 2004, and upon his failing to clear the dues of the bank, the mortgaged property had been sold in a public auction in January 2008 to respondent no.3/Shri Anil Kumar and his wife. It was claimed that he then learnt that though the respondent no.2 had earlier preferred an application under Section 17(1) of SARFAESI Act being S.A.NO. 51/2008 to protect the subject property mortgaged in favour of the bank, but as the property had already been auctioned by then, the DRT, vide its order dated 20.02.2008, disposed of the respondent no.2's application by directing that if respondent no.2 was desirous of redeeming the mortgage, he should clear the dues of the bank within the time granted. Owing to the respondent no.2's failure to clear the dues as directed by the DRT, the bank confirmed the sale of the subject property and issued a sale certificate in favour of respondent no.3 on 30.06.2008.

3. Upon S.A. No.726/2011 being filed by the petitioner, the DRT after noticing that the petitioner was ready and willing to pay the outstanding dues to the bank, permitted the petitioner to deposit the same with a direction to the bank to keep the same in a no lien interest bearing account till the disposal of the S.A. In the meanwhile, the bank was also directed to maintain *status quo* in respect of the subject property. The S.A., however, came to be rejected by the DRT vide its order dated 24.09.2020, by *interalia* holding that the S.A. was barred by limitation. While holding so, the DRT noted the fact that the petitioner/Shri. Major Singh Sidhu had earlier filed an intervention application being MA No.210/2008 in the S.A. filed by the borrower/respondent no.2 being S.A.No. 51/2008, which application was disposed of on 25.11.2008. The petitioner, however, did not take any steps thereafter for over three years and filed a belated S.A on 16.12.2011. The DRT also rejected the petitioner's claim that he was the owner of the property as the subject property stood transferred in his favour by way of a GPA dated 30.12.2004 claimed to have been executed in his favour by respondent no.2. Furthermore, the DRT did not find any infirmity in the auction of the subject property by the respondent no.1/bank as the same was conducted after giving due notice to the borrower/respondent no.2 and after following the procedure as prescribed under the SARFAESI Act. However, keeping in view the fact that the petitioner had paid the outstanding amounts to the bank under the orders of the DRT, the bank was directed to return the

amount along with interest @10% p.a. within 30 days, failing which, the bank was held liable to pay further interest @12% compounded six monthly to the legal representatives of the petitioner, as he had expired during the pendency of the proceedings before the DRT. The petitioner was simultaneously granted thirty days' time to hand over actual and physical possession of the subject property to the bank.

4. Aggrieved with the order passed by the DRT rejecting his S.A., the petitioner, being represented through his legal representatives preferred an appeal before the DRAT, which has been rejected under the impugned order. Before the DRAT, the petitioners primarily urged that since they had cleared the dues of the bank, equity was in their favour for retaining the possession of the subject property. It was also claimed that the petitioners, having made the due payments, had a right of redemption under Section 13(8) of the SARFAESI Act. Both these pleas have been rejected by the DRAT by holding that once the borrower/ mortgagor/ respondent no. 2 had failed to redeem the mortgage before the public auction was held, his attorney could not seek to exercise the same right of redemption in its subsequently filed S.A. as the right of redemption, if any, in favour of the borrower/ respondent no.2, already stood extinguished. The DRAT accordingly dismissed the petitioner's appeal and granted the legal representatives of the petitioners three months' time to surrender possession of the subject property to the bank.

5. Before us, learned counsel for the petitioners reiterates the same submissions as raised by him before the DRAT. He contends that the petitioners, having cleared the outstanding payments of the bank, are entitled to be treated as owners of the property and therefore, their rightful

possession of the property for the last sixteen years ought not to be disturbed at this stage. He further submits that even though the outstanding dues of the bank as on 30.04.2007 were to the tune of Rs.13,31,615/-, the property was auctioned by fixing a reserve price of Rs.11.50 lakhs which, in itself, makes it evident that the auction was improper and the respondent no.1/bank was acting in connivance with the respondent no.2/borrower.

6. Having heard learned counsel for the petitioners, we are unable to find merit in any of his submissions. In our view, both the DRAT and the DRT were justified in holding that once the original borrower/ respondent no. 2, despite having being granted opportunity to pay the due amounts had failed to do so, his right to seek redemption stood forfeited; then the petitioner, who was claiming his rights under a GPA executed by the said respondent, could no longer claim a right of redemption. Even otherwise, despite our repeated queries, learned counsel for the petitioners has not been able to give any justification for the delay of three years on the part of the petitioner in preferring S.A. No.726/2011, which has been rejected. As noted hereinabove, the petitioner had moved an application for intervention in the S.A. preferred by respondent no. 2 being S.A. No. 51/2008, which application came to be disposed of on 25.11.2008, but still the petitioner chose to file his S.A. assailing the bank's action only on 16.12.2011 and therefore, it is evident that despite being aware of the bank's action in respect of the mortgaged property, the petitioner chose to remain silent for over three years. The auction purchaser acquired legal and equitable rights upon issuance of the sale certificate, which got further cemented with passage of time. In these circumstances, both the DRT and DRAT were justified in holding that the S.A. filed by the petitioner was grossly barred by

limitation. For the aforesaid reasons, we find no infirmity in the impugned order. The writ petition is, accordingly, dismissed along with the pending application.

VIPIN SANGHI, J

REKHA PALLI, J

JANUARY 18, 2021
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