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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5825 OF 2017

Archana Sanjeev Prakash ....Petitioner

V/s.

Canara Bank and others .....Respondents

Mr. Vishnu Mehra a/w Mr. Prasad Avhad i/b Mr. Kuldeep U. Nikam Advocate for the Petitioner.
Mr. G. S. Godbole a/w Ms. Pavitra Manesh a/w Mr. Saurabh Mandalik i/b Ms. Vaishali Bhilare Advocate for Respondent no. 1.
Ms. Vijaya Mistry Advocate for Respondent no. 13.
Mr. Rahul Soman proposed intervener – Mr. Sunil Kakkad

CORAM : NITIN JAMDAR &
GAURI GODSE, JJ.

DATE : 7 DECEMBER 2022.

P.C.

This Petition is filed for challenging the judgment and order dated 1st February 2017 passed by Debts Recovery Appellate Tribunal (DRAT) Mumbai in Appeal No. 129 of 2015. By the said order, DRAT, decided two appeals i.e. Appeal No. 129 of 2015 and Appeal No. 210 of 2015. Both the appeals were filed for challenging the order dated 3rd March 2015 in Misc. Application No. 36 of 2013 in Securitization Application (SA) No. 115 of 2011. Misc. Application No. 36 of 2013 was filed by the Petitioner for recalling Order dated 15th March 2012. The Petitioner was Respondent no. 1 in Appeal No. 129 of 2015 filed by Bank-Respondent No. 1 and Respondent No. 11 in Appeal No. 210 of 2015 filed by Respondent No.3.

2. The following are the relevant facts with respect to the impugned order :

(i) On 25 August 2011, Petitioner filed S.A. No.115 of 2011 before DRT, Pune under section 17 of the SARFAESI Act. By the said Application the Petitioner challenged the action of Respondent No.1-Bank of taking possession of the property i.e. Basement No. 8 in building known as "Chetna Cooperative Housing Society Ltd" situated at Camp, Pune ("the subject property") and for restoration of possession of the subject property. The Petitioner filed the Application on the ground that she was owner of the subject property and Respondent no. 7 by misusing the power of attorney in his favour had illegally created mortgage with respect to the subject property. Thus, she alleged fraud on the part of Respondent Nos. 1 and 2 as well as Respondent No. 7.

(ii) On 28 February 2012, Respondent-bank filed reply to the said

Application.

(iii) On 15 March 2012, S.A. No. 115 of 2011 filed by the Petitioner was dismissed by DRT.

(iv) Hence, the Petitioner preferred Appeal No. 110 of 2012 before the DRAT and also filed Miscellaneous Application No. 419 of 2012 praying for waiver from depositing the amount as per Section 18(1) of the SARFAESI Act.

(v) On 17 May 2012, M.A. No. 419 of 2012 was decided and the Petitioner was granted time to deposit the amount in three installments. DRT also directed to maintain status quo in respect of the secured property till the next date.

(vi) Being aggrieved and dissatisfied by the order dated 17 May 2012 the Petitioner had filed Writ Petition No. 5310 of 2012 in this Court. On 4 July 2012, the Writ Petition was dismissed.

(vii) On 15 October 2012, SLP filed by the Petitioner for challenging order dated 17 May 2012 and the order passed by this Court in Writ Petition was also confirmed.

(ix) On 11 August 2013, the Petitioner filed Application No. 36 of 2013 in S.A. No115 of 2011 for recalling the order dated 15 March 2012. The

Petitioner sought to file the said Application under section 22(2)(4) of the Recovery of Debts Due to Bank Act, 1993 read with Rule 5(a) of the DRT Rules. The Petitioner had filed the said Application by contending that she had discovered that the Respondent-Bank had deliberately and intentionally suppressed/withheld/concealed in its reply dated 28 February 2012, certain material facts and documents which clearly proved that Respondent No. 1 – Bank had played fraud on the Petitioner and created equitable mortgage on her property. She alleged that her signatures were forged and that she had never consented for creating mortgage on her property.

(x) On 4 April 2014 Respondent Bank filed reply and opposed the Application filed by the Petitioner.

(xi) On 24 July 2014 Respondent nos. 3 and 4 also filed their reply and opposed the said Application.

(xii) On 14 March 2014 Respondent No. 7 filed reply in MA/36/2013 and prayed for dismissal of the same.

(xiii) On 3 March 2015 DRT allowed M.A/36/2013 and recalled the earlier order dated 15 March 2012 passed in S.A. No.115 of 2011. DRT further directed that SA/115/2012 be restored and heard afresh. DRT disposed of Exhibit Nos. 28 and 30 filed by the Petitioner as infructuous.

(xiv) On 10 April 2015 Respondent No. 1- bank filed Misc. Appeal No. 129 of 2015 for challenging the order dated 3 March 2015 by which the earlier order dated 15 March 2012 was recalled and S.A. No.115 of 2011 was restored.

(xv) On 28 April 2015 the Petitioner filed her reply and opposed the said Appeal filed by the Respondent No.1 -Bank

(xvi) On 1 February 2017 Misc. Appeal No. 129 of 2015 filed by Respondent No. 1- Bank was allowed and order dated 3 March 2015 passed in favour of the Petitioner was quashed and set aside.

(xvii) Respondent No. 3 had filed Misc. Appeal No. 210 of 2015 also for challenging order dated 3 March 2015 by which S.A. No.115 of 2011 was restored. The said appeal filed by Respondent No. 3 was also allowed by a common judgment dated 1 February 2017 passed by the DRAT.

3. By the said judgment and order dated 1st February 2017, DRAT allowed both the appeals and set aside order dated 3rd March 2015 passed in MA No. 36 of 2013 in SA No. 115 of 2011 by DRT. DRAT examined all the facts and circumstances which gave rise to Petitioner filing the application for recalling the earlier order passed by DRT. DRAT considered all the relevant facts. DRAT recorded that by Order dated 17th May 2012, passed by DRAT in MA No. 419 of 2012, which was filed by the Petitioner for waiver of deposit, had directed the Petitioner to deposit Rs. 5,06,05,716/- in three instalments. Said order was confirmed upto Hon'ble Supreme. DRAT thus, observed that the Petitioner had filed an application for recalling the earlier order, only after her SLP was dismissed.

4. We have examined the facts on record. The Petitioner has stated in her application for recalling earlier Order, that she recently learnt about the fraud purportedly committed in the year 2009 with respect to subject property owned by her. She contended that entire auction of the Respondent-Bank in taking possession on 4th August 2011 was illegal and same was based on unauthorized documents. The Petitioner had also contended that she had never authorized the Respondent no. 7 to execute any guarantee bond on her behalf for the loan sanctioned to the borrower and she was not concerned with the loan transaction.

5. By judgment and order dated 15th March 2012, SA No. 115 of 2011 was dismissed by taking into consideration all the allegations with respect to fraud that were pleaded by the Petitioner. Her application for waiver to deposit amount was dismissed by DRAT, by dealing with all her allegations with respect to fraud and directions issued by DRAT to deposit the amount was confirmed upto Hon'ble Supreme Court.

6. Petitioner had contended that only vide letter dated 4th July 2013 received by her from Reserve Bank of India, in response to her query under Right to Information Act, she learnt about the fraud committed with respect to the subject property being mortgaged. Hence, she had filed an application for recall. DRAT allowed the appeals filed for challenging the order dated 3rd March 2015 by holding that allegations with respect to fraud pleaded by the Petitioner were already considered in the earlier round of litigation and were confirmed upto the Hon'ble Supreme Court. Perusal of the order dated 3rd March 2015 shows that DRT has not even referred to earlier orders which dealt with allegations with respect to fraud made by the Petitioner. By order dated 3rd March 2015, DRT in paragraph no. 19 has recorded a reason that there was suppression of facts by Respondent nos. 1 and 2 with respect to legal opinion and the order of Chairman and Managing Director of the Respondent-Bank thereby granting permission to classify the case of fraud and to lodge CBI complaint in the matter and that complaint was filed by Respondent nos. 1 and 2 with RBI. Except for the said reasons recorded in paragraph no. 19, DRT has not given any reasons to recall the earlier order. DRT did not even refer to earlier orders confirmed upto Hon'ble Supreme Court which had specifically examined the allegations made by the Petitioner with respect to alleged fraud committed by the Respondent-Bank.

7. Perusal of the facts of the case shows that the Petitioner only with an intention to avoid pre-deposit of the amount for the purpose of filing the appeal had filed an application for recalling the earlier order dated 15th March 2012. Perusal of the application filed by the Petitioner for recalling the earlier order do not specify any specific date of knowledge showing that new facts were revealed for the purpose of filing an application for recalling the earlier order. Even otherwise, no provision of law was shown to us, that empowered DRT to review the earlier order. It is pertinent to note that DRT had failed to even refer to the earlier orders and record any reasons as to why the earlier order was required to be recalled though the allegations with respect to fraud were already examined in the earlier round of litigation and were confirmed upto Hon'ble Supreme Court. Hence, we do not find any merits in the present Petition. In our view, the impugned order passed by DRAT is a reasoned order and it justifies quashing and setting aside of the order by DRT for recalling it's earlier order.

8. There is thus no merit in the petition and the same is dismissed with no order as to costs.

[GAURI GODSE, J.] **[NITIN JAMDAR, J.]**