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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 20.04.2022

\+ **W.P.(C) 13743/2019, CM Nos.15377/2022**

SHOBHA ..... Petitioner

Through: Mr. Sanjeev Bhandari and Mr. Sushant Bali, Advs.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr. Vivek Jain, Ms. Akanksha Singh and Ms. Aastha Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE POONAM A. BAMBA
[Physical court hearing/ hybrid hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):-

CM No.15377/2022

1. This is an application filed on behalf of the petitioner for restoration of the writ petition, which was dismissed in default on 14.02.2022.

2. The above-captioned application is accompanied by a medical report of the petitioner, which shows that the petitioner was admitted in Fortis Hospital, Shalimar Bagh on 12.07.2021, and was discharged on 18.07.2021.

2.1. The diagnosis, which as set out in the medical report, reads as follows:

> "• *Seizure Episode*
> • *Wide neck Bilobed Saccular Aneurysm of Acom*
> • *Accelerated Hypertension*"

2.2. Furthermore, the medical history of the patient and the treatment given to her as recorded by hospital in its report reveals that the petitioner was admitted to the ICU, as well.

3. The counsel for the respondent-bank has opposed the prayer made in the above-captioned application.

3.1. According to the counsel for the respondent-bank, the period of illness does not align with the date, when the writ petition was dismissed in default i.e., 14.02.2022.

4. We have heard the learned counsel for the parties.

4.1. According to us, the objection raised by the respondent-bank cannot be sustained.

4.2. The petitioner has claimed that because of her illness, she was not able to follow up the case, and therefore could not give requisite instructions to her lawyer.

4.3. That apart, having regard to the nature of the illness, we are inclined to believe that there was a certain amount of impediment in progressing, the case.

4.4. Furthermore, the above-captioned application for restoration was moved, within less than one month of the order dated 14.02.2022.

5. Thus, given the aforesaid circumstances and the assertions made in the above-captioned application, we are inclined to allow the prayer made therein.

6. Accordingly, the order dated 14.02.2022 is recalled.

7. The writ petition is restored to its original number and position.

8. The application is, accordingly, disposed of.

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9. With the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

10. *Via* this writ petition, challenge has been laid to the order dated

30.10.2019, passed by the Recovery Officer-II attached to Debt Recovery Tribunal-III [in short 'the Tribunal'].

11. The grievance of the petitioner is that the objections to the sale raised by her were not considered by the Tribunal, in light of the facts and circumstances obtaining in the case.

11.1. The petitioner claims to be the owner of the subject property i.e., Flat no. 75, SFS, Category-II, Second Floor, Shalimar Bagh, New Delhi.

11.2. Mr. Sanjeev Bhandari, who appears on behalf of the petitioner, says that an equitable mortgage *qua* the subject property was created by the petitioner, against a loan taken at the relevant point in time from Oriental Bank of Commerce (OBC).

11.3. We are informed that OBC now stands amalgamated/ merged with the Punjab National Bank i.e., the respondent-bank.

12. According to us, the Tribunal needs to examine the aforementioned aspects.

12.1. If, as the petitioner claims, she had availed of a loan from OBC, which, as indicated above, has now merged with the respondent-bank, the following, broadly, needs to be examined: firstly, as to whether any Original Application (OA) was filed against petitioner to recover the loan. Secondly, has the outstanding amount been paid by the petitioner.

12.2. It appears to us that the original title deeds, if what the petitioner says is correct, should now be available, upon amalgamation/merger, with the respondent-bank. The respondent-bank will, then, ascertain as to whether or not any amount is due from the petitioner, against the loan taken by her.

13. Insofar as the instant case is concerned, admittedly, the borrower is the petitioner's husband i.e., one, Mr. Sunil Kumar.

13.1. Clearly, given this position, the petitioner's immovable property cannot be sold, and the proceeds received thereto, cannot be adjusted by the respondent-bank against the loan taken by her husband i.e., Mr. Sunil Kumar.

14. The Tribunal does not seem to have applied its mind to these aspects of the matter, indicated above, and, therefore, we are inclined to set aside the impugned order.

14.1 It is ordered accordingly.

15 The Tribunal will re-examine the issue, and after ascertaining the correct facts from both parties, will pass a fresh order.

15.1. To hasten the proceedings, the parties and their counsels will appear before the Tribunal on 23.05.2022.

15.2. The Tribunal will endeavour to dispose of the matter at the earliest, though not later than 12 weeks from the date of the receipt of a copy of this order.

16. Needless to add, nothing stated hereinabove will prejudice the rights and contentions of the parties before the Tribunal.

17. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 20, 2022/*manju*

Click here to check corrigendum, if any