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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 11.07.2022

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RFA(COMM) 38/2022 & CM APPL. 25130-25132/2022

STATE BANK OF INDIA

..... Appellant

Through: Mr Rajiv Bhupal Samaiyar,
Advocate.

versus

TANIYA CIVIL PROJECTS PVT LTD

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE NAJMI WAZIRI****HON'BLE MR. JUSTICE VIKAS MAHAJAN****NAJMI WAZRI, J. (ORAL)**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This appeal impugns the judgment and decree dated 11.02.2022 passed by the Ld. District Judge (Commercial) Patiala House Court, New Delhi in CS (COMM.) No. 385/2020, directing the appellant Bank to pay the respondent a sum of Rs.33,31,630/- along with interest *pendent lite* and future interest @6.25% p.a. from the date of filing the suit till realization. It also rejected the banker's contention that the bank had a general lien over the amount in fixed deposits.
2. The respondent had taken a loan of Rs.110.00 lacs from the appellant-Bank on 14.06.2003 against mortgage of two



properties. There was irregularity in re-payment of debt, which got classified as Non-Performing Assets ('NPA'). Proceedings for recovery were initiated. Notice under Section 13 (2) of the SARFAESI Act was issued on 02.05.2006. In due course, the bank realized Rs.185 lacs through sale of equitable mortgaged properties in the name of the Directors and Guarantors situated at DLF, Gurgaon. As the realized amounts were not sufficient in repayment of complete dues towards the bank, another property at Neemrana (i.e., Industrial Plot C-10, 10A at Neemrana Industrial Area, Alwar, Rajasthan) standing in the name of the guarantor i.e., Walia Food Industries was sold to M/s Vandana Promarts Pvt Ltd. for a sum of Rs.84,00,000/- on 18.06.2007. An entity, namely, M/s Charisma Information Technology Pvt. Ltd. approached DRT-II, Delhi claiming that they were prior purchasers of the said property through a registered sale deed dated 29.11.2005 and that they had been in possession of the said land before M/s Charisma Information Technology Pvt. Ltd. could lay a claim thereto.

3. The banker's plea before the DRAT was dismissed and its writ petition (W.P.(C) 6578/2015) against the said order is pending in this court. The banker however, has received all monies which were due to it.
4. The respondent had made fixed deposits (FDs) of Rs.30 lacs through three FDRs each between 2004 and 2011 with the appellant-bank. The FDs were renewed from time to time. The total amount as of 16.03.2020 was Rs.33,31,630/-. In March,



2018, the respondent sought to encash the FDRs; the Bank did not encash them, nor did it give any reasons for its silence and inaction. Therefore, the suit was filed. The suit was filed for repayment of the said amount which was directed by the impugned judgment.

5. It is not in dispute that the banker had extended credit facility to the respondent in the year 2003. The FDRs were made after that i.e., between 2004 to 2011. No lien was created apropos the same against any of the credit facilities. All credits extended to the respondent were sufficiently secured against properties which had been mortgaged. The respondent was never informed through any written communication as to why the FDRs were not being encashed. The impugned judgment notes that in W.P.(C) No.4067/2015 [*M/s Vrindavan Promarts Pvt. Ltd. v. M/s Charisma Information Technology Pvt. Ltd.*] and W.P.(C) No.6578/2015 [*State Bank of Bikaner and Jaipur v. Charisma Information Technology Pvt. Ltd. and Ors.*], no order has been passed by this court for not releasing the amount against the FDRs in favour of the respondent nor is there a stay from any court apropos non-release of the FDR amounts. The impugned order also notes that while the bank may be paying interest on the FDRs, but the same would not prevent the respondent from realizing the entire value of the FDRs. For the aforesaid reasons, the aforesaid order was passed. Interestingly, the respondent is not a party to any of the writ petitions.
6. The Banker has received all its monies claimed under the



section 13(2) notice. While the Bank's dispute with third parties may be pending before judicial fora, such amounts as may have been kept in FDRs by the respondent/erstwhile borrower, would therefore ordinarily be free for encashment/redemption at the option of the depositor. Especially since the amounts were repaid/recovered by the Bank almost a decade ago. A Fixed Deposit made with the bank is in reality a loan to it. The FDR is only an acknowledgment by the Bank of the monies deposited with it. The Bank uses such deposits to carry on its lending business. The FDRs can be encashed unless there is an encumbrance or lien created on it.

7. In the present case the respondent- borrower had secured the loans/credit facility against properties which have been mortgaged to the Banker. There was default in repayment. The properties were sold-off and the entire amounts due towards the Bank have been repaid. The FDRs were created after the credit facility had been obtained. At no stage was the respondent ever intimated that the Bank had a specific lien on the three FDRs created between 2004 to 2011.
8. As noted hereinabove the FDRs were created almost a decade and a half ago. Redemption was sought in 2018 much after the entire amount was re-paid to it. *Ex facie*, it was iniquitous for the bank to hold onto the fixed deposit amounts and interest accrued thereon, even after realization of the total loan amount.
9. On a query put to the learned counsel for the appellant-bank as to whether it had any lien on the FDRs, the answer was in the



NEUTRAL CITATION NO: 2022/DHC/003029

negative. That being the position, the FDRs are readily redeemable

10. In view of the above the court does not find any reason to interfere with the impugned judgment. There is no merit in the appeal and the same is accordingly dismissed.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

JULY 11, 2022/rd

