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

% *Date of Decision: 29.08.2023*

+ **W.P.(C) 9930/2023 and CM Nos. 38221/2023 & 38222/2023**

IKHTIYAR AHMED ..... Petitioner

Through: Mr Ashish Kumar Sharma and Mr Arun Kumar Gupta, Advocates.

versus

UNION BANK OF INDIA AND ORS. ..... Respondents

Through: Mr U.N. Singh, Advocate for R-1/UBI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 17.05.2023 (hereafter '**the impugned order**') passed by the learned Debts Recovery Appellate Tribunal (hereafter **'the DRAT'**) dismissing the petitioner's appeal for want of the pre-deposit in terms of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (hereafter '**the RDB Act**'). The petitioner, who is a son of one Mr Abdul Nabi was arrayed as defendant no.6 before the learned Debts Recovery Tribunal-III, Delhi (hereafter '**the DRT'**) in OA No. 53/2007 filed by the respondent bank (Union Bank of India).

2. The petitioner had filed an appeal against the Recovery

Certificate issued against Late Mr Abdul Nabi (since deceased) and his Legal Representatives on the premise that the deceased was a guarantor to the loan/financial facilities advanced by the Union Bank of India to respondent no.2. The Union Bank of India had produced a guarantee deed to establish that Mr Nabi had guaranteed the repayment obligations of the financial facilities extended to respondent no.2. In addition, the Union Bank of India also claimed that Mr Nabi had created an equitable mortgage of the property (Agricultural Land measuring 4.33 hectares situated at village Khirka, Shahbad, District Rampur, UP).

3. According to the petitioner, the deed of guarantee is fabricated and Mr Nabi had not executed any such deed. It is contended on behalf of the petitioner that Mr Nabi used to place his thumb impressions for executing documents and had not affixed his signatures on any document. He also relies on several documents as produced before the learned DRT in support of his contention.

4. Insofar as creating equitable mortgage of the subject agricultural property is concerned, it is the petitioner's case that the said documents had been handed over to respondent no.3 because at the material time Mr Nabi was intending to sell the property and respondent no.3 had taken the property documents to assist in finding the buyer for the subject property. It is material to note that it is not disputed that the original title deeds are with the Union Bank of India.

5. The learned DRT did not accept the material and evidence produced by the petitioner. It concluded, on the basis of evidence led

by the Union Bank of India that Mr Nabi had executed the guarantee deed and also created the equitable mortgage in respect of the subject agricultural property.

6. The petitioner preferred an appeal against the order dated 07.01.2020 passed by the learned DRT, which was dismissed by the impugned order passed by learned DRAT for want of pre-deposit.

7. The learned counsel appearing for the petitioner submits that Section 21 of the RDB Act is not applicable as the petitioner is neither a borrower nor a guarantor. However, his contentions proceed on the basis that the learned DRT's finding – which he seeks to challenge before the learned DRAT – are erroneous.

8. The question whether Mr Abdul Nabi had created the equitable mortgage in respect of the subject agricultural property or executed the guarantee deed is the subject matter of the appeal that petitioner seeks to canvas before the learned DRAT. Decisions in regard to such contentious issues cannot precede the final adjudication for deciding whether the petitioner is liable to make the pre-deposit.

9. The question of pre-deposit under Section 21 of the RDB Act cannot be viewed on the assumption that the petitioner's challenge to the order passed by the learned DRT is merited and the same is required to be set aside.

10. We find no infirmity with the impugned order passed by the learned DRAT.

11. The petition is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 29, 2023
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