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

% *Date of Decision: 17th November,2023*

\+ **W.P.(C) 14700/2023 & CM APPL. 58508/2023**

SMT. SANGEETA SETHI ..... Petitioner

Through: Mr. Sanjeev Singh, Mr. Varun Bedi and Ms. Mudrakshi, Advs.

versus

UNION BANK OF INDIA & ORS. ..... Respondents

Through: Mr. Samarendra Kumar, Adv. for R-1.

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

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.11.2023 (hereafter '**impugned order**') passed by the learned Debts Recovery Appellate Tribunal (hereafter '**DRAT**') in Regular Appeal No. 251 of 2022, whereby the petitioner's prayer for interim relief was rejected.

2. The petitioner had filed the aforesaid appeal (Regular Appeal No. 251 of 2022) against an order dated 15.11.2022, passed by the learned Debts Recovery Tribunal-III, New Delhi (hereafter '**DRT**'), whereby the petitioner's Securitisation Application (S.A. No.

05/2018), filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**SARFAESI Act**'), was rejected.

3. It is the petitioner's case that her father-in-law had purchased the First Floor of the built up property constructed on Plot No. 878, Block-I, Palam Vihar, Gurugram (Haryana) for a consideration of ₹54,45,000/-. The sale deed in respect of the said property was executed in favour of the petitioner's father-in-law on 27.09.2012.

4. According to the petitioner, though the sale deed mentions the amount of ₹54,45,000/-, the actual consideration was in excess of the amount mentioned in the sale deed.

5. The petitioner's father-in-law gifted the said property to the petitioner and her husband in terms of a registered gift deed dated 12.11.2012.

6. The respondent bank claims equitable mortgage in respect of the said property by virtue of a Memorandum of Deposit of the title deeds dated 23.09.2011. The said Memorandum indicates that title deeds in respect of the land and building under construction bearing Plot No. 878, Block-I, Palam Vihar, Gurugram (Haryana), were deposited with the respondent bank.

7. There is no dispute that the petitioner's predecessor-in-interest (petitioner's father-in-law) had purchased the subject property in question while the same was already mortgaged to the respondent bank. The petitioner's husband had accordingly filed an FIR on

becoming aware that the borrower (M/s Mount Agro & Infra Developers Pvt. Ltd.) had sold the said property to his father (petitioner's father-in-law) without disclosing that the same was mortgaged with the respondent bank.

8. It is material to note that pursuant to the filing of the FIR, Neeraj Gupta, the director of the borrower company (M/s Mount Agro & Infra Developers Pvt. Ltd.), filed an application for Anticipatory Bail (CRM-M-40447 of 2017 captioned *Neeraj Gupta vs State of Haryana*) before the Punjab and Haryana High Court.

9. In the said proceedings, the applicant (Neeraj Gupta) deposited ₹55 Lakhs, and an additional amount of ₹2 Lakhs by way of compensatory costs to the State of Haryana. The amount of ₹55 Lakhs was based on the consideration of ₹54,45,000/- reflected in the sale deed executed in favour of the petitioner's father-in-law.

10. It is apparent from the orders passed by the Punjab and Haryana High Court in the aforesaid matter that the said amount was in the context of the complaint filed by the petitioner's husband. In view of the said deposit, the Punjab and Haryana High Court granted anticipatory bail to the applicant (Neeraj Gupta). However, the order dated 28.03.2018 passed by the Punjab and Haryana High Court, indicates that both the parties, that is, petitioner's husband as well as the respondent bank had sought to lay a claim on the said amount of ₹55 Lakhs as the issue whether the respondent bank was entitled to proceed against the subject property was pending before the learned

DRT. Accordingly, the Punjab and Haryana High Court directed that the said amount be transferred to the learned DRT in OA No.653/2014/SA No.256/2014.

11. The learned DRT accepted the respondent bank's contention that it had a subsisting security interest in respect of the subject property and accordingly rejected the Securitisation Application filed by the petitioner. The learned DRT had also directed that the amount of ₹55 Lakhs deposited by Sh. Neeraj Gupta in CRM No.6309-10 of 2018 be also made over to the respondent bank.

12. As noted above, the petitioner appealed the said decision before the learned DRAT.

13. The impugned order indicates that the learned DRAT had found that, *prima facie*, the equitable mortgage in respect of the subject property was created on 23.09.2011, which was prior to the sale deed executed in favour of the petitioner's predecessor-in-interest. Accordingly, the learned DRAT rejected the petitioner's prayer for interim order restraining the bank from taking over possession of the subject property. However, the learned DRAT also clarified that any observation made in impugned order was for the purposes of considering the interim application, and should not be construed an expression of opinion on the merits of the appeal.

14. We find no fault with the impugned order. There appears to be no dispute that equitable mortgage in respect of the subject property was created in favour of the respondent bank prior to the sale deed

executed in favour of the petitioner's predecessor-in-interest.

15. The FIR lodged by the petitioner's husband is also premised on the basis that the borrower had sold the subject property despite the same being mortgaged to the respondent bank.

16. As noted earlier, the impugned order is confined to rejection of interim relief. The learned DRAT is yet to decide the petitioner's appeal. This also includes the issue regarding disbursal of the sum of ₹55 Lakhs. As noted above, the said amount was deposited with the Punjab and Haryana High Court in the context of the FIR filed by the petitioner's husband. The said amount is also based on the value of the consideration reflected in the sale deed of the subject property in favour of the petitioner's predecessor-in-interest.

17. *Prima facie*, the respondent bank cannot lay any claim on the said amount, and yet pursue its claim against the mortgage property. The learned counsel for the respondent bank states on instructions that the bank would elect to continue with enforcing their security interest in respect of the subject property rather than claim the amount of ₹55,00,000/-.

18. As noted above, there is no dispute that petitioner's predecessor-in-interest was a *bona fide* purchaser. The petitioner and her family members are using the subject premises as their residence and would require sometime to secure alternate accommodation.

19. In the given circumstances, we consider it apposite to direct that the respondent bank shall not take any effective step for recovering

possession of the subject property from the petitioner till 31.03.2024. This is subject to the petitioner filing an undertaking by way of an affidavit in this Court within a period of three working days from today, to the effect that she shall voluntarily handover the possession of the subject property to the authorized officer of the respondent bank on or before 31.03.2024. This is without prejudice to the petitioner's rights and contentions in the pending appeal before the learned DRAT.

20. It is expected that the learned DRAT shall also examine the petitioner's claim in respect of the amount of ₹55,00,000/- along with interest deposited with the learned DRT.

21. Insofar as the impugned order is concerned, as stated above, we find no fault with the same.

22. The present petition is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 17, 2023

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