2023:DHC:5741-DB

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

% *Date of Decision:10.08.2023*

+ **W.P.(C) 16909/2022 & CM APPL. 53602/2022 & CM APPL. 2137/2023**

DHRUVA CHOUDHARY ..... Petitioner

Through: Ms. Anshul Gupta, Mr. Kirti Dua, Mr. Shubham Kaushik, Ms. Rani Shandilya, Mr. Prakhar Bhardwaj & Ms. Subhangi Tiwari, Advs.

versus

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

Through: Mr. Himanshu Shekhar, Mr. Parth Shekhar, Ms. Ambali Vedasen & Mr. Shubham Singh, Advs. for Central Bank of India.
Mr. Rajkumar, Adv. for UOI.
Mr. Manu Beri & Mr. Prateek Kasliwal, Advs. for R4.
Mr. Ramesh Babu, Ms. Manisha Singh, Ms. Nisha Sharma, Ms. Jagriti Bharti & Ms. Tanya Chowdhary, Advs. for RBI.

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,* praying that the proceedings instituted by respondent bank (Central Bank of

India) before the learned Debts Recovery Tribunal (hereafter '**the DRT**') in O.A.974/2018 captioned ***Central Bank of India v. Druva Choudhary*** be stayed. The petitioner also prays that the proceedings instituted by the Central Bank of India under Section 138 of the Negotiable Instruments Act, 1881, in respect of dishonour of cheques, issued by the petitioner, be stayed.

2. The petitioner had booked a residential flat (being no. T-3(A)/B-701 (hereafter '**the said flat**') in a development named as "Shubhkamna City", located at Plot No. GH-2/A, Sector-1, Greater Noida West, being developed by respondent no.5 (M/s Shubhkamna Buildtech Pvt. Ltd. – hereafter '**the builder**').

3. The builder had issued an allotment letter in respect of the said flat. It had also entered into a Flat Buyers Agreement dated 13.05.2016 with the petitioner for sale of the said flat at a consideration of ₹57,40,375/-. The petitioner claims that, thereafter, it approached respondent bank (Central Bank of India) along with the builder for sanction of a loan in respect of the said flat. On 07.06.2016, the petitioner also paid an amount of ₹4,50,000/- to the builder. Thereafter, the builder gave its permission/no objection for mortgaging the said flat (which was allotted to the petitioner but was yet to be developed) for availing of loan from the respondent bank.

4. On 15.06.2016, the said parties also entered into a Tripartite Agreement. In terms of the Tripartite Agreement, the respondent bank paid a sum of ₹32,24,655/- directly to the builder. The petitioner

claims that disbursement of the loan to the builder was contrary to the guidelines issued by the Reserve Bank of India and was in complete disregard of the status of the construction at the material time. The petitioner's grievance stems from the fact that the builder has failed in its obligations to deliver the possession of the residential flat within the agreed period.

5. In the meanwhile, a petition under the Insolvency and Bankruptcy Code, 2016 (hereafter '**IBC**') was admitted by the National Company Law Tribunal. The learned counsel appearing for the petitioner states that after the present petition was filed, a resolution plan has been approved in respect of the builder, by the National Company Law Tribunal.

6. The petitioner claims that since the respondent bank had disbursed the amounts directly to the builder in violation of the guidelines issued by the RBI, the petitioner is not liable to pay any amount to the respondent bank. The petitioner also claims that in terms of the Tripartite Agreement, no amount is payable by the petitioner as the possession of the residential flat has not been delivered as yet.

7. This Court is of the view that it would not be apposite to entertain the present petition as it is open for the petitioner to urge the grounds, as advanced, before the learned DRT. The question whether the respondent bank is entitled to recover any amount from the petitioner is required to be addressed by the learned DRT in the first

instance in the proceedings for recovery that have been instituted by the respondent bank. The proceedings instituted by the respondent bank under the Negotiable Instruments Act, 1881, for dishonour of cheques cannot be interdicted. The question whether the petitioner has committed any offence under the said Act is required to be considered by the concerned court.

8. In view of the above, the present petition is disposed of while reserving the rights of the petitioner to raise such contentions as may be advised before the DRT. The petitioner is also not precluded from raising such defence in proceedings instituted under the Negotiable Instruments Act, 1881, as available in law.

9. It is clarified that this Court has not expressed any opinion on the merits of the claims made by the petitioner.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 10, 2023
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