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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2161/2024 and CM APPL. 8954/2024, CM APPL. 8955/2024, CM APPL. 8956/2024**

KAILASH MEHENDIRATTA

..... Petitioner

Through: Mr. Rajshekhar Rao, Senior Advocate
with Mr. Ravi Kapoor and Mr. Rishav
Ambastha, Advocates.

versus

CENTRAL BANK OF INDIA & ORS.

..... Respondents

Through: Mr. S.A. Khan, Advocate for R-1
Mr. Kirti Uppal, Senior Advocate
with Mr. Sidharth Chopra, Mr.
Navneet Thakran, Mr. Aditya Raj and
Mr. Chandan Sinha, Advocates.

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Date of Decision: 15th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present petition filed under Article 226 of the Constitution of India challenges the Judgement and Order dated 21st August, 2023 passed by the Debt Recovery Appellate Tribunal, New Delhi ('DRAT') in Appeal No. 104 of 2022 ('Impugned Judgement') and final order dated 14th June, 2022 passed by the Presiding Officer, Debt Recovery Tribunal-III, New Delhi ('DRT') in S.A. No. 207 of 2019 ('Impugned final order').



2. The learned senior counsel for Petitioner contends that petitioner entered into an unregistered Agreement to Sell dated 09th May, 2017 ('first ATS') with Respondent No. 2 (since deceased) in relation to the property situated at B-34, Sector – 63, Noida, Phase-III, Uttar Pradesh ('subject property') for a total consideration of Rs. 4,31,00,000/-. It is stated that an amount of Rs. 2,19,40,000/- was paid in staggered tranches between 05th May, 2017 to 21st August, 2018. It is stated that subsequently on 09th August, 2017 physical possession of the subject property was handed over to the Petitioner and this was recorded in an Agreement dated 26th September, 2017 ('second ATS' or 'novated ATS') with revised timelines for completion of formalities. It is stated that the Petitioner learnt about the mortgage on 21st July, 2019, when an e-auction notice was issued by Respondent No. 1. It is stated that it is thereafter, the Petitioner approached the DRT in S.A. No. 207/2019 seeking quashing of the e-auction and sale notices and prevention action under Section 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act).

2.1. In the said proceedings, DRT vide order dated 17th April, 2020 directed the Petitioner herein to deposit the balance sale consideration of Rs. 2.15 crores in an FDR; however, DRT in its Impugned final order dated 14th June, 2022 concluded that the said direction has not been complied with in letter and spirit and separately that the Petitioner had no right, title and interest in the subject property in pursuance to the 2nd ATS. The DRT dismissed the Petitioner's application and the appeal filed against the dismissal has been upheld by DRAT vide Impugned Judgment dated 21st August, 2023.



3. Learned senior counsel for the Petitioner states that in pursuance to the 1st ATS, the Petitioner paid an amount of Rs. 2,19,40,000/- to Respondent No. 2 (now deceased) and relies upon the details of payment set out in the table filed as Annexure-4. He states that the Petitioner was put in physical possession of the subject property by Respondent No. 2 and he has been dispossessed in August-September, 2023 by Respondent Nos. 1 and 5. He states that though the Petitioner does not have any registered title deed in his favour, he was put in physical possession by the Respondent No. 2.

3.1. He states that the auction notice dated 14th March, 2020, clearly recorded that Respondent No. 1 is in symbolic possession of the subject property and therefore, the dispossession of the Petitioner is without due process of law. He states that there are no legal proceedings initiated by Respondent No. 1 to recover physical possession of the subject property.

3.2. He states that the findings of DRT and DRAT that the Petitioner had not complied with the order dated 17th April, 2020, directing him to deposit the admitted balance amount of Rs. 2.15 crores is incorrect. He states that the Petitioner had created Fixed Deposits Receipts ('FDRs') for the said amount and retained the originals due to the prevalence of the COVID-19 pandemic.

3.3. He states that the auction purchaser, i.e., Respondent No. 5 has submitted a bid of Rs. 4.30 crores. He states that the Petitioner is willing to deposit the entire amount of Rs. 4.31 crores, which is one lakh higher than the auction bid amount. He states that since the Petitioner was last in physical possession of the subject property, he has a better right to purchase the said property vis-à-vis, the auction purchaser, Respondent No. 5.



4. This Court has considered the submissions of the learned senior counsel for the Petitioner, Respondent No. 5 and learned counsel for Respondent No. 1 and perused the record.

5. At the outset, it is noted that both DRT and DRAT have returned concurrent findings of fact that (i) the Petitioner herein has no enforceable legal interest or rights in the subject property in pursuance of the unregistered and insufficiently stamped second ATS; (ii) the Petitioner wilfully failed to comply with the directions issued by DRT in its order dated 17th April, 2020 directing him to deposit the balance sale consideration of Rs. 2.15 crores; (iii) the Petitioner himself has not filed any suit for specific performance of the second ATS with respect to the subject property; (iv) the Petitioner did not have the requisite permission from Noida Authority to purchase the subject property; (v) a valid charge stood created in favour of the Respondent No. 1, bank on 21st June, 2017 and was duly registered with Central Registry of Securitisation Asset Reconstruction and Security Interest of India ('CERSAI'); (vi) the second ATS dated 26th September, 2017, in pursuance whereof, the physical possession is alleged to have been handed over to the Petitioner herein was admittedly executed after creation of mortgage and registration of charge in question with CERSAI.

6. The Petitioner has failed to show any error in the aforesaid findings of the DRT and DRAT.

7. The DRT vide Impugned final order dated 14th June, 2022 directed Respondent No. 1 bank to hand over the possession of the subject property to Respondent No. 5, i.e., the auction purchaser. The DRAT declined any interim order for protecting the possession of the Petitioner. The date of the



Impugned Judgment and order passed by DRAT is 21st August, 2023. Learned counsel for Respondent No. 1 states that Respondent No. 1 followed due process for recovering physical possession. The Petitioner admits that he has since been physically dispossessed. Conspicuously, it is averred in the petition that the physical dispossession occurred between August-September, 2023. No date of dispossession has been pleaded. The Petitioner admittedly did not file a protest with any competent authority with respect to his alleged dispossession. The present petition has been filed on 13th December, 2023 and is listed for the first time today. There is no explanation set out in the petition for this delay in approaching this Court. The Petitioner's delay in approaching this Court or any other competent authority against the alleged forcible dispossession and non-mention of the specific date in the petition, is significant and not in ordinary course. In these facts, the allegation of the Petitioner that it was forcibly dispossessed does not inspire any confidence.

8. The Petitioner contends that he was in physical possession of the subject property in pursuance to an unregistered second ATS dated 26th September, 2017. In view of Section 53-A of Transfer of Property Act, 1882 and Section 17(1A) of Registration Act, 1908, the said unregistered second ATS is inadmissible in evidence and cannot be relied upon by the Petitioner for protecting his right of possession.

9. Further, the subject property is situated in the State of Uttar Pradesh. Sections 17(2)(v) and 49 of the Registration Act, 1908 have been amended by the U.P. Civil Laws (Reforms and Amendment) Act, 1976, which came into force w.e.f. 01st January, 1977. After considering the effect of the said



amendments, it has been held by the High Court of Allahabad in *Surendra Kumar v. Amarjeet Singh*¹ that a contract of sale of immovable property (even when unaccompanied by possession) is required to be made only by a registered agreement; and an unregistered agreement cannot be enforced in a suit for specific performance.

10. In view of the concurrent findings of the DRT and DRAT noted above as well as the finding of law that the second ATS relied upon by the Petitioner is inadmissible and unenforceable in law, this Court finds no error in the findings of the DRAT and DRT that the Petitioner herein has no legal and enforceable proprietary rights in the subject property.

11. Accordingly, the present petition is without any merits and is dismissed. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 15, 2024/hp/ms

Click here to check corrigendum, if any

¹ AIR 2004 Allahabad 335 (paragraphs 22 and 28)