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

\+ W.P.(C) 16551/2024 & CM APPL.70024/2024, CAV 585/2024

PUJA AIRY ...Petitioner

Through: Mr. Navin Kumar Singh and Mr. Vaibhav Joshi, Advocates.

versus

STATE BANK OF INDIA & ORS. ..Respondents

Through: Mr. Sanjiv Kakra, Senior Advocate with Mr. Akash Madan, Advocate for respondent No.1.
Mr. Arnav Kumar, CGSC with Ms. Saumya Kapoor, Advocate for UOI.

Date of Decision: 2nd December, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

MANMOHAN, CJ: (ORAL)

1. Present writ petition has been filed under Articles 226 & 227 of the Constitution of India, 1950, challenging the order dated 29th July, 2024 passed by the DRT-II, Delhi in S.A. No.243/2024 and order dated 30th August, 2024 by the DRAT in Misc. Appeal No.255/2024. Petitioner further seeks restoration of possession of the property at 19 AVN, Amaltas, Westend Greens, Rajokri, Delhi - 110038 (for short 'subject property').

2. Learned counsel for the petitioner states that *vide* order dated 29th July, 2024, the Debt Recovery Tribunal (for short 'DRT') declined to

grant interim relief in favour of the petitioner. Aggrieved thereof, the petitioner filed Misc. Appeal No. 255/2024 before the Debts Recovery Appellate Tribunal (for short 'DRAT') assailing the aforesaid order. The DRAT disposed of the appeal *vide* order dated 30th August, 2024 on the ground that the petitioner has not made a pre-deposit in terms of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI').

3. He states that the respondent no.4/brother of the petitioner took advantage of the opportunity and lacunae in provisions of SARFAESI Act, to usurp the share in the property of his sister and the officials of the respondent no.1/bank, supported him by concealing the SARFAESI proceedings from her.

4. He states that the subject property was mortgaged by the father of the petitioner in 2012 when he acted as a guarantor for a loan extended to respondent no.3/company. He states that the father of the petitioner was of unsound mind at the time when the property was mortgaged and it was witnessed by the respondent no.4's own persons. He also states that the petitioner's father was of unsound mind when the term of the loan was extended in 2017. He alleges that respondent no.4 who is the brother of the petitioner, took advantage of his father's mental state to create the mortgage.

5. He states that the petitioner is entitled to her 1/3rd share in the subject property and the bank is not entitled to proceed with the auction in respect of her share in the property. He states that notice under section 13(2) or 13(4) of the SARFAESI Act was not served upon the petitioner and the same was concealed from her by the respondent no.4/brother. He points out that as per the possession notice dated 29th July, 2024, the subject property measures 938 square yards. He, however, states that in

the auction/sale notice dated 24th October, 2024, it has been stated that the subject property measures 760 square yards. He alleges that an area of 178 square yards from the subject property has been kept for respondent no.4/brother.

6. He states that the original title documents of the subject property were not delivered to the respondent no.1/bank by petitioner's father. He states that the respondent no.1/bank has deliberately not filed Memorandum of Entry to conceal the identity of the person who delivered the title deeds.

7. After hearing arguments at the admission stage, this Court is not inclined to interfere in the proceedings pending before the lower authorities.

8. The petitioner does not dispute that the property was mortgaged by the father on 13th April, 2012. The petitioner also does not dispute that the medical document alleging her father's mental illness or incapacity is dated 22nd August, 2015, i.e., post the creation of the mortgage. This submission alongwith the contention that her share in the said property cannot be put to auction by the bank are all disputed questions of facts which can only be adjudicated by DRT or DRAT. It is apparent from the submissions that the petitioner has stepped into the shoes of the borrower as she is claiming her rights upon the mortgaged property. It is also clear that the respondent no.1/bank has the first charge on the said mortgage property.

9. In view of the above, it is apparent that the petitioner has to comply with the statutory requirement of making a pre-deposit in terms of Section 18 of the SARFAESI Act. No application seeking waiver of the pre-deposit was filed before the DRAT. In the present petition, there is no averment as to why pre-deposit has not been made by the

petitioner. It is trite that pre deposit is mandatory in the absence whereof, the DRAT may not be able to entertain an appeal filed by a party. (See: ***Kotak Mahindra Bank Pvt. Ltd. vs. Ambuj A Kasliwal & Ors., (2021) 3 SCC 549***)

10. In view of the above, the present petition is dismissed alongwith pending applications.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

DECEMBER 2, 2024/*rl*