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

\+ W.P.(C) 11986/2019 & CM APPL. 49075/2019

KAMAL DHINGRA .....Petitioner

Through: Mr. Sanjeev Bhandari with Mr. Fanish K. Jain, Advocates.

versus

PUNJAB NATIONAL BANK AND ORS. .....Respondents

Through: Mr. Rajinder Wali, Advocate for R-1. Mr. Ravi Data, Advocate for R-2 and R-3.

\+ W.P.(C) 2048/2020 & CM APPL. 7199/2020

M/S ANURAG ENTERPRISES .....Petitioner

Through: Mr. Sanjeev Bhandari with Mr. Fanish K. Jain, Advocates.

versus

PUNJAB NATIONAL BANK AND ORS. .....Respondents

Through: Mr. Rajinder Wali, Advocate for R-1. Mr. Ravi Data, Advocate for R-2 and R-3.

\+ W.P.(C) 987/2020 & CM APPL. 3180/2020

VIPIN KUMAR .....Petitioner

Through: Mr. Sanjeev Bhandari with Mr. Fanish K. Jain, Advocates.

versus

PUNJAB NATIONAL BANK AND ORS. .....Respondents

Through: Mr. Rajinder Wali, Advocate for R-1.
Mr. Ravi Data, Advocate for R-2 and R-3.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON’BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **05.05.2025**

1. Petitioners in the present case are the buyers of the following properties:

a. Petitioner in W.P.(C) 11986/2019 is the buyer of Flat No. A-103, First Floor, ELDECO Apartments, Plot No.II, Sector-4, Vaishali, Ghaziabad 201010, Uttar Pradesh, belonging to the Respondent No.3 in W.P.(C) 11986/2019;
b. Petitioner in W.P.(C) 2048/2020 is the buyer of Shop No. 4, Ground Floor, 3405 Ward No. VI, Gali Hakim Baqa, Hauz Quazi Delhi- 110006 belonging to the Respondents No.3 & 4 in W.P.(C) 2048/2020;
c. Petitioner in W.P.(C) 987/2020 is the buyer of Shop No. 11, Ground Floor, 2826, Peepal Mahadev, Hauz Qazi, Delhi – 110006 belonging to the Respondent No.3 in W.P.(C) 987/2020;

2. Respondent No.1 is the Bank and Respondents No.2 & 3 are the Borrowers.

3. The present Writ Petitions have been filed by the Petitioners under Article 226/227 of the Constitution of India against the Order dated

18.04.2019, passed by the Debts Recovery Appellate Tribunal (DRAT) dismissing Misc. Appeal No.196/2017 and upholding the Order dated 14.12.2016, passed by the Debts Recovery Tribunal (DRT) dismissing I.A. No.280/2016, filed by the Borrowers in OA No.770/2015. OA No.770/2015 was filed by the Respondent No.1 herein/Bank for recovery of money from the Respondents No.2 & 3/Borrowers, who had borrowed money from Respondent No.1/Bank.

4. Shorn of unnecessary details, the facts, leading to the present Petitions, are as under:

a) It is stated that Respondent No.1 granted credit facilities to Respondents No. 2 & 3 herein to the tune of Rs.4.50 Crores. It is stated that in order to secure the said credit facilities, the Respondents No.2 & 3 mortgaged properties, namely, (i) Shop No. 4, Ground Floor, 3405 Ward No. VI, Gali Hakim Baqa, Hauz Quazi Delhi- 110006 belonging to the Respondents No.3 & 4 in W.P.(C) 2048/2020; (ii) Shop No. 11, Ground Floor, 2826, Peepal Mahadev, Hauz Qazi, Delhi – 110006 belonging to the Respondent No.3 in W.P.(C) 987/2020; (iii) Flat No. A-103, First Floor, ELDECO Apartments, Plot No.II, Sector-4, Vaishali, Ghaziabad 201010, Uttar Pradesh, belonging to the Respondent No.3 in W.P.(C) 11986/2019 (*hereinafter referred to as "the properties in question"*) to the Respondent No.1/Bank.

b) It is stated that defaults were committed by Respondents No.2 & 3 in repayment of the credit facilities which resulted in Respondent No.1 invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as " the SARFAESI Act"*).

c) It is stated that challenging the action taken by the Respondent No.1/Bank under the SARFAESI Act, Respondents No.2 & 3 filed SA No.242/2016 under Section 17 of the Securitisation Act before the DRT-III, Delhi. It is stated that on 02.07.2015 during the course of hearing in SA No.242/2016, learned Counsel for the Borrowers submitted that they have buyers and the Bank be directed to provide a copy of the valuation report of the properties in question. Accordingly, the DRT directed the Bank to file the latest valuation report of the properties in question. It is stated that on 17.07.2015 the Petitioners herein entered into separate Agreements to Sell with the Borrowers for purchasing the respective properties. On 20.07.2015 learned Counsel for the Borrowers submitted before the DRT that the Borrowers have buyers for the properties in question for a composite value of Rs.1.42 crores and to show their *bona fide*, the Borrowers deposited Rs.16 lakhs with the Bank as upfront amount. Learned DRT directed the Bank to take a decision on the proposal of the Borrowers. It is stated that on 04.09.2015, learned Counsel for the Bank informed the DRT that the offer of the Borrowers can be accepted by the Bank and the properties in question can be released provided an amount of Rs.1.57 crores is deposited instead of Rs.1.42 crores as proposed by the Borrowers. It is stated that the offer of the

Bank was accepted by the Borrowers and the SA was disposed of by the DRT. Order dated 04.09.2015 reads as under:

"*The Ld. Counsel for applicant submits that the applicant has offered to deposit a sum of Rs. 142.00 lacs on the condition that bank will release the title deeds of all the 3 properties mortgaged with the bank and gave 3 bank drafts amount to Rs. 16.00 lacs towards part payment of Rs. 142.00 lacs and remaining, amount shall be deposited within three months.*

The Ld. Counsel for respondent bank submits that offer of the - applicants were considered by the competent authorities of the respondent bank and they have accepted the proposal of the applicants to release the title deeds of the properties in question provided applicants will , deposit the market value of the properties i.e. Rs. 157.58 lacs in place of Rs. 142.00 lacs of the properties.

The Ld. Counsel for respondent bank further submits that he has filed the reply/affidavit of Shri S.K. srivastava. Chief Manager of the respondent bank vide Diary No. 8018 dated 12.08.2015.

After hearing both sides at length and perusing the records this tribunal is of the view that matter has been amicably settled between that parties and after receiving the entire offered amount the bank may release the title deed in accordance with law.

In case of reasonable delay on part of applicant the bank may consider favourably.

In view of the above nothing survives in the present S.A and the same is disposed of.

File be consigned to record."

d) Accordingly, the Bank released the original title deeds of the properties in question to the Borrowers for onward transmission on Borrowers depositing Rs.1.57 crores with the Bank. On 23.12.2015 learned Counsel for the Bank confirmed before the DRT that full and final payment of Rs.1.57 crores has been received by the Bank and the mortgage charge over the properties in question has been released by the Bank. Order dated 23.12.2015 reads as under:

> "*The learned counsel for the applicant submits that the matter is settled with, the respondent bank and buyer has deposited a sum of Rs. 1.57 crore with, the respondent bank. He further submits that he wish to withdraw the present applications. "The Id counsel for the respondent bank submits that they have received the entire settlement amount from the buyer.*"

e) It is stated that after the SA was disposed of, the Bank filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (*hereinafter referred to as* "*the RDDB Act*"), being OA No.770/2015, before the DRT seeking restrain orders on the properties in question.

f) *Vide* Order dated 01.01.2016, the learned DRT passed an ex-parte Order restraining the Borrowers from alienating, selling, disposing, mortgaging, leasing, renting or otherwise parting with possession or creating third party interest in respect of the properties in question. The Borrowers filed an application, being IA No.280/2016 before the DRT for recalling of the

Order dated 01.01.2016. The said application was dismissed by the DRT *vide* Order dated 14.12.2016.

g) Order dated 14.12.2016 was challenged by the Borrowers before the DRAT by filing MISC. Appeal No.196/2017. The said appeal was dismissed by the DRAT *vide* Order dated 18.04.2019.

h) The Petitioners herein, who are the buyers of the respective properties in question have filed the present Petitions stating that the Order passed by the DRT, as upheld by the DRAT, is arbitrary as the Petitioners are neither the borrowers nor the guarantors rather they are the *bona fide* purchasers of the respective properties in question.

5. Learned Counsel appearing for the Petitioners contend that after receiving the full amount, as recorded in the Order dated 23.12.2015, and after the properties in question being released by the Bank, it was not open for the Bank to obtain the restrain Order in respect of the very same properties. He states that the Order dated 23.12.2015 categorically records that the Bank has received the entire amount of Rs.1.57 crore from the buyers of the properties in question. He states that even before the ink was dry on the said Order, i.e. within five days of passing of the Order dated 23.12.2015, the Bank could not have filed an application under Section 19 of the RDDB Act before the DRT seeking restrain orders on the properties in question.

6. *Per contra*, learned Counsel appearing for the Bank supports that order passed by the DRAT.

7. Heard the learned Counsels for the parties and perused the material on

record.

8. The DRAT, after recording the proceedings in SA 242/2016, accepted the contention of the Bank that merely getting the mortgage released from the charge of the Bank by making payments to the Bank at market value, the borrowers, who still owe to the Bank over Rs.4 crores, cannot claim that they cannot be restrained from dealing with the released properties on the ground that have to sell the properties to the third parties. Relevant portions of the Order dated 18.04.2019, wherein the contention of the Bank and the reasoning given by the DRAT is recorded, reads as under:

> "*6. The respondent .Bank is resisting this appeal on the grounds that merely by getting the mortgaged properties released from the charge of the Bank by making payments of their market value, may be through some third party, the appellants, who still owe to the Bank over four crores, of rupees, cannot claim that they, cannot be restrained from dealing with the released properties on the ground that they are supposed to sell the released properties to the third party prospective buyer and to execute the sale deeds in favour of the buyer. Prima facie, so long as the appellants owe money of over four crores to the respondent Bank and that liability is finally adjudicated by the DRT the Bank can put obstacles in their attempt to dispose of those properties since those properties still remain their properties and not of the so-called third party buyer who in any case has not even surfaced to raise a grievance against the Bank that it was on its assurances that he it had agreed to buy the properties in question and had paid money to the Bank. In these circumstances, pr/ma facie, even principle of estoppel cannot be invoked by the appellants and I find substance in the submission of the learned counsel for the Bank, Mr. R.Wali that, prima facie, the alleged transaction with the so called*

> *prospective buyer was a sham transaction.*
>
> *7. Thus, the learned Presiding Officer of the DRT cannot be' said to have committed any illegality in rejecting the prayer of the appellants-defendants for vacating the stay order dated 01.01.2016 passed against the sale of the three properties in question and the that order has rightly been ordered to be continued during the pendency of the 0,A, The balance of convenience is . in favour of the Bank which will also suffer irreparable loss in case the appellants succeed in disposing of their properties to third parties without clearing the 'public money' of crores of rupees which the Bank is claiming to be still due to it.*"

9. A perusal of the abovementioned Order reveals that the DRAT has not considered the effect of the Order dated 23.12.2015, passed by the DRT in SA No.242/2016. The facts of the case reveals that the proceedings had been initiated by the Bank under the SARFAESI Act by issuing notice under Section 13(2) & 13(4) of the SARFAESI Act. In the said proceedings, the properties in question were sold to the Petitioners herein by making an offer before the DRT. Entire amount of the properties in question has already been paid to the Bank. The fact that money has been paid over and above the valuation report has been accepted by the Bank. The properties were released from the charge of the Bank and the only step that was remaining was to register the respective properties in the names of the Petitioners herein.

10. In the opinion of this Court, the conduct of the Bank to include the properties in question, which have already been released from mortgage, in the list properties for which restrain orders were sought, is to say the least dishonest. Once the properties have been released from mortgage upon

receiving the money, it was not open for the Bank to attach them as the Petitioners have already paid for the properties.

11. In view of the above, this Court is inclined to set aside the Order dated 18.04.2019, passed by the Debts Recovery Appellate Tribunal (DRAT) dismissing Misc. Appeal No.196/2017 and upholding the Order dated 14.12.2016, passed by the Debts Recovery Tribunal (DRT) dismissing I.A. No.280/2016.

12. The Writ Petitions are disposed of, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

MAY 05, 2025
Rahul