

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

% Judgment delivered on 29.06.2012

+ **WP(C) No. 3799/2012**

M/s Shiv Kumar Aggarwal & Ors.

... Petitioners

Versus

Development Credit Bank Ltd. & Anr.

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Sudhir Nandrajog with Mr Ravi Data and Mr Rajesh Sharma,

For the Respondents : Mr Hashmat Nabi, Advocate for Respondent No.1
Mr. Akhil Sibal, Mr Anil Karnwal and Mr Suresh Arora for the
Respondent No. 2/Caveator.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

V.K. JAIN, J. (ORAL)

CM No. 7966/2012 (Exemption)

Allowed, subject to just exceptions.

The application stands disposed of.

Cav 630/2012

Since the caveator/Respondent No. 2 has put in appearance, caveat stands discharged.

WP (C) No. 3799/2012 & CM No. 7965/2012 (under Section 151 CPC)

1. This writ petition is directed against the order dated 27.06.2012 passed by Debt Recovery Appellate Tribunal (DRAT) in Appeal No. 110/2012 in S.A. No. 10/2010 (Delhi-II).
2. The petitioners are co-owners of Property No. C-134-D, Surya Nagar, Ghaziabad. Pursuant to notice issued under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, possession of the aforesaid property was taken by defendant No. 1—Development Credit Bank Limited on 17.10.2008. The possession of the aforesaid property was handed over to the Court Receiver on 23.10.2010. Pursuant to the order passed by DRAT, the above-referred property was put to auction. The highest bid of Rs 2.45 crore was received as against the reserved price of Rs 2.40 crore. The Tribunal permitted the petitioners to bring a better buyer. This order was passed on account of the petitioners challenging the order dated 23.11.2011, whereby the reserved price was fixed by DRAT at Rs 2.40 crore. Pursuant to the permission granted by the Tribunal, the petitioners introduced two buyers, namely, M/s Quadros Impex Pvt. Ltd., which offered Rs

2.50 crore and M/s ADPS Consultants Pvt. Ltd. which offered Rs 2.55 crore. At this stage, respondent No. 2 M/s G.C.G. Enterprises Private Ltd. entered the fray and expressed willingness to purchase the aforesaid property. The Tribunal directed inter se bidding amongst the four bidders introduced by the petitioners, i.e., the bidder who had given bid of Rs 2.45 crore, respondent No. 2 and two bidders, namely, M/s Quadros Impex Pvt. Ltd., and M/s ADPS Consultants Pvt. Ltd. The bidders were also permitted to withdraw their offer before start of the process of inter se bidding. M/s Quadros Impex Pvt. Ltd. withdrew its offer and consequently, the inter se bidding took place only amongst three bidders. Respondent No. 2, which gave the bid for Rs 311 lakh was declared as the highest bidder. Admittedly, sale certificate to respondent No. 2 has already been issued on 30.05.2011 though it has not been registered so far. The grievance of the petitioners is that 25% of the bid amount of Rs 311 lakh was not deposited by respondent No. 1 on 19.04.2011 when the inter se bidding took place, the same having been deposited only on 23.04.2011. Yet another grievance of the petitioners is that the time for depositing the balance 75% of the sale price was extended by defendant No. 1 which it could not have done. The petitioners filed IA No. 422/2011 seeking fresh auction and also an order forfeiting the amount deposited by respondent No. 2. Yet another application being IA No. 781/2011 was filed by them seeking re-auction of the property and permission to bring a better buyer, who was ready to

offer Rs 325 lakh. Vide order dated 19.03.2012, both these applications were dismissed by the Tribunal. Feeling aggrieved by the order dated 19.03.2012, the petitioners filed the appeal which is still pending before DRAT.

3. Vide order dated 03.05.2012, DRAT directed the petitioners to deposit 25% of the notice amount of Rs 3,13,80,466 /- within two weeks. This order was necessitated on account of the provisions contained in Section 18 of SARFAESI Act, which, to the extent, it is relevant provides that no appeal shall be entertained unless the borrower has deposited with the Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less and which further provides that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt referred to in the second proviso. The petitioners, however, failed to comply with that order. Vide order dated 18.05.2012, DRAT granted four days more to the petitioners to comply with the order. However, the petitioners still did not comply with the orders dated 03.05.2012 and 18.05.2012. Vide order dated 11.06.2012, DRAT noted the contention of the learned counsel for the petitioners that the appellants before it (the petitioners before this Court) had made arrangement of the money and demand draft of Rs 20 lakh and two cheques of Rs 25 lakh each were ready with him, whereas a sum of Rs 10 lakh had already been deposited earlier. DRAT condoned the delay in deposit and directed that the

demand draft and the cheques be given to the bank officer for deposit in the loan account of the petitioners before this Court. It was made clear that the payment was subject to clearance of the cheques and if the cheques were cleared, the interim order granted earlier shall continue, otherwise the bank shall be at liberty to proceed as per law. It would be appropriate to note that the interim order passed by DRAT was that in case 25% of the notice amount was deposited, the bank shall not hand over the possession in question to the auction purchaser. However, two cheques of Rs 25 lakh each which the petitioners before this Court handed over to the counsel for the bank before DRAT on 11.06.2012 were dishonoured. As a result, there was default in compliance of the order dated 11.06.2012. The petitioners before this Court then filed IA No. 200/2012, which came to be dismissed vide impugned order dated 27.06.2012.

4. Since the appeals filed by the petitioners are pending before DRAT, we refrain from making any observations on the merits of the case set up by the petitioners, lest our observations prejudice the appeals pending before DRAT. But, we would like to say that when cheques are handed over by a party to the litigation to another party in the Court, there is an implicit assurance given to the Court that these cheques, when presented to the bank will be honoured. We would, at this stage, also like to note again that the learned counsel appearing for the petitioners before DRAT on 11.06.2012, had made a categorical statement that the funds had

been arranged by the petitioners, which clearly implied that they had sufficient money with them for encashment of the cheques which were being handed over to the bank officer before DRAT. The petitioners, therefore, failed to honour the implied assurance, which they gave to the DRAT, while handing over two cheques of Rs 25 lakh each to the bank on 11.06.2012. We feel that DRAT has been quite indulgent while dealing with the appeal of the petitioners. DRAT did not insist on deposit of 50% of the notice amount and directed deposit of the minimum permissible amount. The time given for the deposit was extended initially by four days and thereafter, cheques were taken instead of insisting upon payment by pay orders/bank drafts being given to the bank. Considering the conduct of the petitioners, we are of the view that they do not deserve any further indulgence in the matter.

5. The learned counsel for the respondent No. 2 has, in order to address the apprehensions of the petitioners, states before us, on instructions from Mr Vijay Verma, Manager/authorized representative of respondent No. 2, that respondent No. 2 shall not (i) create any third party interest in the property in question and shall not hand over possession of the property or any part of it to any other person; (ii) shall not induct any person in this property in any capacity; (iii) shall not carry out any addition, alteration or repair in the aforesaid property, without prior permission of the Tribunal; (iv) in case the appeals pending before the DRAT are

allowed, shall hand over peaceful and vacant possession of the aforesaid property to the Court Receiver. We also direct that delivery of possession by Court Receiver to respondent No. 2 will not create any equities in its favour.

With these directions, the writ petition stands disposed of.

V.K.JAIN
(VACATION JUDGE)

PRATIBHA RANI
(VACATION JUDGE)

JUNE 29, 2012

bg