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

+ W.P.(C) 4557/2019

NAVDEEP SINGH AND ANR.

..... Petitioners

Through: Mr. Sanjeev Bhandari with Mr. Prateek
Kumar, Advs.

versus

HDFC BANK LIMITED AND ANR.

..... Respondents

Through: Ms. Gurmeet Bindra, Adv. for
respondent Bank.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

30.04.2019

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C.M. No. 20287/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 4557/2019 & C.M. No. 20286/2019

Issue notice. Ms. Bindra accepts notice on behalf of the respondents.

The petitioner is aggrieved by the orders dated 01.02.2019 and 14.03.2019 passed by the learned Debts Recovery Appellate Tribunal (DRAT) in appeal No. 10/2019, arising out of O.A. No. 635/2015 (DRT-III, Delhi). The said Original Application has been preferred by the respondent bank to recover its dues. The Original Application was returned under Order 7 Rule 10 on account of lack of territorial jurisdiction. The respondent bank has preferred the aforesaid appeal to assail that order.

During the pendency of the appeal, and while issuing notice in the appeal, the learned DRAT passed an ex parte order on 01.02.2019 – directing attachment of property No.5, Village Kaimalgarh, VPO Nehru College, Jhajjar, Haryana–124103. The Tribunal also injuncted respondent No. 2 before it from dealing with the said property till further orders. The Tribunal also appointed the authorised officer of the bank to enter into the said property, if necessary with police aid and by breaking open the locks if the property were to be found locked and to prepare an inventory of each and every item lying in the said property.

The grievance of the petitioner, firstly, is that no relief of attachment of the said property had been sought in the Original Application. Thus, no relief of attachment could have been sought, much less granted by the Appellate Tribunal. He is aggrieved by the ex parte attachment of the said property. Mr. Bhandari submits that there is no recovery certificate issued by the DRT in the present case as on date, since the Original Application has been returned for lack of jurisdiction. In these circumstances, there was no justification to attach the property, or to appoint the receiver to make an inventory of the movables lying in the said property. He also points out that contrary to the order of the DRAT dated 01.02.2019, the authorised officer of the respondent bank sought to take possession of the property and for that purpose even sought police aid, which, fortunately, was not provided.

The petitioner is also aggrieved by the subsequent order dated 14.03.2019. On the said date, the learned DRAT has refused to release the said property from attachment, on the premise that the petitioner claims that the said property belongs to the father of petitioner No.1 herein and, therefore, it is open to the father of petitioner No.1 herein to come forward

to claim such relief.

Mr. Bhandari submits that the petitioner No.1 was willing, and is even now willing to disclose the address where the hypothecated equipments/ machinery are lying and to take the authorised officer of the respondent bank to take over the possession thereof and to deal with the same. Mr. Bhandari fairly states that he shall not oppose the delay in filing of the appeal and agree to condonation of delay.

We have heard the submissions of Mr. Bhandari, learned counsel for the petitioner as well as Ms. Bindra, learned counsel for the respondents. Considering the status of the proceedings, namely the return of the Original Application under Order 7 Rule 10 CPC; the fact that no recovery certificate has been issued by the DRT in the present case as on date; the fact that the appeal of the respondent bank is pending against the said order of rejection under Order 7 Rule 10 along with an application to seek condonation of delay in filing the appeal, and; the impugned orders are in the nature of interim orders, we restrict the interim order passed by the DRAT to an order of injunction in relation to the aforesaid property.

Accordingly, the order of attachment in relation to the said property stands vacated. The order directing preparation of inventory is also recalled for the time being. The learned DRAT shall proceed to hear the parties on merits. The aforesaid interim arrangement shall prevail during the pendency of the appeal. On the next date, before the DRAT, the petitioner shall file an affidavit disclosing the whereabouts of the hypothecated machinery and shall also offer to take the authorised representative of the respondent bank to the said address so that the hypothecated machinery can be removed by the respondent bank and sold to recover the dues.

The petition stands disposed of in the aforesaid terms.
Dasti.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 30, 2019
N.Khanna