

HIGH COURT OF DELHI**Bench: Acting Chief Justice, Hon'ble Ms. Justice Manmeet Pritam Singh Arora****Date of Decision: 19th February, 2024**

W.P.(C) 10710/2021 & C.M.Nos.65947/2023, 65975/2023

CONT.CAS(C) 155/2024

SHRI SUSHIL KUMAR CHADHA ...PETITIONER**VERSUS****CANARA BANK & ORS. ...RESPONDENT****Legislation:**

Rules 60 and 61 of Second Schedule of the Income Tax Act, 1961

Subject: Petition involving the release of title deeds of property auctioned by Canara Bank to the petitioner, and the legal implications of the sale being challenged in an appeal by the deceased original owners.**Headnotes:**

Auction Sale of Property & Legal Proceedings – Auction sale of property to petitioner, challenged by deceased original owners in an appeal before DRT. Property sold by Canara Bank under recovery proceedings. Petitioner in physical possession since 2008. Issue about the legality of auction and subsequent sales of property under scrutiny. [Paras 1-2, 3-5, 8, 12-13]

Misrepresentation and Legal Compliance – Allegations of misrepresentation by petitioner regarding auction sale's status and non-compliance with court's directions on informing subsequent purchasers about pending litigation. Court

directs all sales of property to include mention of pending appeal. [Paras 2.4, 4.1, 13-15]

Role of Respondent Bank & Auction Procedures – Bank's role in auction sale and legal obligations under Income Tax Act. Incorrect submission by bank on appeal's status as abated, leading to scrutiny of bank's conduct and compliance with legal procedures in auction sales. [Paras 3, 3.2]

Court's Directions on Expedited Appeal Hearing – Court directs expedited hearing of pending appeal challenging auction sale, recognizing long delay since filing in 2008. Emphasizes impartiality and open rights and contentions in appeal. [Para 16]

Dismissal of Applications and Contempt Petition – Disposal of related applications and dismissal of contempt petition, in light of main judgment's findings and directions. [Paras 17-19]

Referred Cases: Not specified.

Representing Advocates:

Petitioner: Mr. Harish Malhotra, Sr. Advocate with Mr. Ashim Vaccher, Mr. Anoop Kumar, and Mr. Kunal Lakra, Advocates.

Respondents: Mr. Ashish Kumar Sharma for R-1/Canara Bank. Mr. Pallav Saxena with Mr. Mohammad Nausheen Samar, Mr. Diwaker Goel, Ms. Supreeti Chauhan and Mr. Nipun Sharma, Advocates for LRs of R-3 & 4. Mr. Anupam Gupta for Applicants-Subsequent purchasers.

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CM APPL. No. 40032/2022 and CM APPL. 54891/2023 in W.P.(C) 10710/2021

1. The application i.e., CM APPL. No. 40032/2022, has been filed by legal representatives of deceased Respondent Nos. 3 and 4 seeking recall of the order dated 8th November, 2021, whereby, the present petition being W.P.(C) 10710/2021 was disposed of after issuing directions to Registrar, Debt Recovery Tribunal-III, Delhi ('DRT-III'), with respect to release of title deeds of property bearing No. 16/867 (Northern Part) Joshi Road, Karol Bagh, New Delhi, built up on plot ad measuring 312.23 sq. yds. two storey ('subject property'), to the auction purchaser i.e., the Petitioner herein.

2. Learned counsel for the Applicants stated that the order dated 8th November, 2021, is predicated on a fraud perpetrated by the Petitioner/nonapplicant on the Court. He stated that the auction sale confirmed in favour of the Petitioner is a subject matter of challenge in an appeal¹ filed by deceased Respondent Nos. 3 and 4, which is pending adjudication before Debt Recovery Tribunal-I ('DRT-I'). He stated that Respondent No. 4 passed away on 25th February, 2015 and her legal representatives were substituted on 20th July, 2015 in the appeal proceedings. He stated that these facts were within the knowledge of the Petitioner and therefore, the impleadment of a dead person as a Respondent in the writ petition was illegal.

2.1. He stated that similarly, the Respondent No. 3 passed away on 21st April, 2021 and an application for substitution of his legal representatives has since been filed before DRT-I on 11th August, 2022. He stated that the said application is pending adjudication.

2.2. He stated that since Respondent Nos. 3 and 4 were the appellants in the appeal pending before DRT, they were proper and necessary parties in the writ petition. He stated that the submission of the Petitioner in the writ petition and on 22nd September, 2021, before this Court that Respondent Nos. 3 and 4 are proforma parties is therefore, misleading. He stated that the deceased Respondent Nos. 3 and 4 had challenged the auction sale confirmed in favour of the Petitioner in the said appeal and therefore, the reliefs sought in the present petition directly affected the said Respondents. He stated that if the appeal is allowed in favour of the appellants therein, the consequence would be that the auction sale dated 7th February, 2008, made in favour of the Petitioner, will be set aside.

2.3. He stated that on 8th November, 2021, this Court was misled to believe that the appeal filed by Respondent Nos. 3 and 4 has been dismissed as

¹ Initially Appeal No. 09/2008 (now renumbered as Transfer Appeal No. 36/2022)

abated. He stated that the order of abatement dated 6th April, 2015, stood recalled on 20th July, 2015 and the appeal remains pending till date. 2.4. He stated that lastly, the Petitioner made a statement on 8th November, 2021, before this Court that he shall put any subsequent purchaser to notice with respect to the pending appeal proceedings before DRT; however, the said statement has been flagrantly breached and has not been complied with. He stated that the subject property has since been sold by Petitioner to five (5) purchasers, who have now filed the CM APPL. No. 54891/2023 in this petition stating therein that they are not aware about the pending litigation before DRT. He stated that therefore, the Petitioner is in breach of his undertaking given to this Court on 8th November, 2021, and liable for contempt.

3. In reply, learned counsel for Respondent No. 1/Canara Bank, at the outset conceded that the submission with respect to abatement of the appeal, as recorded at paragraph no. '6' of the order dated 8th November, 2021, was made under a bona fide mistake. He stated that however, the fact that Respondent No. 3 passed away on 21st April, 2021, was not brought on record of the DRT till 11th August, 2022 and therefore, the said appeal qua Respondent No.3 had abated by operation of law, as no legal representatives were brought on record within the period of limitation. He stated that the application for bringing the legal representatives of Respondent No.3 on record has been filed belatedly on 11th August, 2022, along with an application seeking condonation of delay, which is still pending adjudication before DRT-I.

3.1. He stated that the Respondent Bank holds a recovery certificate in pursuance to the final order dated 22nd July, 2004, passed in O.A. 173/1999. He stated that the subject property was sold in an auction on 27th November, 2007, the sale was confirmed on 7th February, 2008, after the Bank received the entire sale consideration from the Petitioner. He stated that the possession of the subject property was handed over to the Petitioner on 7th February, 2008. He stated that in the appeal filed by Respondent Nos. 3 and 4 an interim order was passed on 3rd November, 2008, directing the Petitioner herein to not create third-party interests. He stated that the said interim order was vacated on 6th April, 2015 and neither the Respondent Nos. 3 and 4 nor their legal representatives have filed any appeal against the vacation of the interim order. He stated that therefore, the applicants herein cannot have any grievance with the directions issued by this Court on 8th November, 2021.

3.2. He stated that since the sale of the subject property has been confirmed, the appeal filed by Respondent Nos. 3 and 4 cannot be maintained

without complying with Rules 60 and 61 of Second Schedule of the Income Tax Act, 1961.

4. Learned senior counsel for the Petitioner stated that in the entire writ petition, no averment was made to the effect that the appeal filed before DRT stands abated. He stated that since no relief was sought against Respondent Nos. 3 and 4, they were neither necessary nor proper parties to the writ petition and were therefore, described as proforma parties. He stated that that the fact of death of Respondent No. 3 was not known to the Petitioner as it was not brought on record at the time of filing of the writ petition. He stated that the prayers/directions sought in the writ petition were directed against Respondent No. 1 and the Registry of DRT-III for release of original title deeds in view of the confirmation of auction sale in his favour.

4.1. He stated that lastly, the Petitioner had duly informed the subsequent purchasers (i.e., the applicants in CM APPL. No. 54891/2023) with respect to the entire litigation and handed over the record of the litigation to the said purchasers. He stated that the subsequent purchasers have due notice and knowledge of the proceedings pending before DRT. He stated that therefore, there is no violation of the statement of the Petitioner recorded in the order dated 8th November, 2021. In this regard, he relied upon the contents of the additional affidavit dated 27th January, 2024, filed in the present proceedings.

5. In response, learned counsel appearing for the subsequent purchasers i.e., the applicants in CM APPL. No. 54891/2023, stated on instructions that the subsequent purchasers shall remain bound by the statement of the Petitioner and directions recorded in the order dated 8th November, 2021. He stated that the subsequent purchasers have due notice of the pending appeal proceedings filed by the deceased Respondent Nos. 3 and 4, before DRT and fully understand that auction sale of the subject property is in issue in the said appeal; and the rights of the purchasers/subsequent purchasers qua subject property are bound by the outcome of the said appeal.

6. This Court has considered the submissions of learned senior counsel for the Petitioner and learned counsels for the Respondent No. 1, Respondent Nos. 2 and 3 and subsequent purchasers.

7. In view of the controversy noted hereinabove, the subsequent purchasers, who have bought the subject property from the Petitioner are necessary parties and accordingly, CM APPL. 54891/2023 filed by the subsequent purchaser is allowed and they are impleaded as Petitioner Nos.

2 to 6. The amended memo of parties annexed with the said application is taken on record.

8. The cause of action for the Petitioner in filing the writ petition was pithily recorded by the Court in its order dated 22nd September, 2021. It is undisputed that the auction sale in favour of the Petitioner was confirmed on 7th February, 2008 and after payment of the entire sale consideration, he was put in physical possession of the subject property in pursuance thereto. The interim order dated 3rd November, 2008, passed in Appeal No. 09/2008 was vacated by DRT-I on 6th April, 2015 and the said order has attained finality. Subsequently, there was a consequential direction issued on 2nd September, 2015, by the Recovery Officer DRT-III to Respondent No. 1 to handover the original title deed as well as the chain of the original documents to the Petitioner herein. However, the said direction was not complied with by Respondent No. 1 citing several reasons and the Petitioner despite filing several applications before the Recovery Officer and DRT-III, was unable to secure the release of documents. It was in the aforesaid facts that the Petitioner being aggrieved by the apathy of the Respondent No.1, filed the present writ petition seeking a direction to the Registry of DRT-III, to release the original title deeds to the Petitioner herein.

9. In view of the aforesaid conspectus, we are of the considered opinion that legal representatives of Respondent Nos. 3 and 4 were not necessary parties to the writ and therefore, describing them as proforma parties was reasonable. Further, since no directions were issued to Respondent Nos. 3 and 4 in the order dated 8th November, 2021, the non-impleadment of the legal representatives of Respondent Nos. 3 and 4 is inconsequential.

10. The pendency of the Appeal No. 09/2008 and the challenge to the auction sale of the subject property was duly brought to the knowledge of the Court as is evident from the contents of paragraph nos. 6 to 8 of the order dated 8th November, 2021, which reads as follows: -

“6. It is agreed between the parties i.e the petitioner and respondent bank that, of the two sale deeds for 182 sq. yards each, which aggregate to 364 sq. yards, the petitioner may be delivered any one of them since the petitioner has purchased in auction sale, area ad measuring 312.23 sq.

Yards, while the other sale deed for 182 sq. yards may be retained by the respondent bank. Mr. Sharma who appears for the respondent-bank states that the bank has no objection to the petitioner dealing with the entire area of 312.23 sq. yards in respect whereof the sale certificate

*has also been issued to the petitioner. **He, however, points out that the proceedings challenge [sic] the same at the behest of the original owner are pending inasmuch, as, an application for recall of the abatement order has been filed and has not been decided.***

7. **Mr. Malhotra states that in case the petitioner deals with property purchased in the auction sale, the petitioner shall put any subsequent purchaser to notice of the pending proceedings before the DRT at behest of the original owner, with a further obligation that the purchaser in turn would inform any subsequent purchaser of the same.**

8. *In the light of the aforesaid we dispose of the petition with a direction to the Registrar, DRT-III to retrieve the said two sale deeds of 182 sq. yards each from the record of O.A. No. 172/1999 titled Canara Bank v. Grover Home Appliances Pvt. Ltd. and to deliver one of them to the petitioner against acknowledgment, whereas the other may be delivered to the respondent bank. The respondent bank shall hold the title deed placed with it in trust and it shall be open to the petitioner, or any subsequent purchaser to seek inspection of the same to be able to deal with the property in question at any point of time. The bank shall provide inspection to any interested party as and when requested. **The parties shall also remain bound by the aforesaid statement made to this Court.** The petition stands disposed of in the aforesaid terms.”*
(Emphasis Supplied)

11. As is evident, the Court having been made aware of the pendency of the appeal, incorporated the safeguard of enjoining the Petitioner with the obligation to make subsequent purchaser aware about the pendency of the appeal before DRT. We are therefore, of the considered opinion that there was no suppression by Petitioner with respect to the pendency of Appeal No. 09/2008 and the order dated 8th November, 2021, was passed with due notice of the said proceedings.

12. The incorrect submission of Respondent No. 1-Bank, to the effect that the appeal has abated and an application for setting aside the abatement is pending, though erroneous, does not affect the merits of the directions issued by the Court on 8th November, 2021, in the facts of this case. As noted above, the auction sale had been confirmed in favour of the Petitioner in the year

2008 and the Recovery Officer had issued directions on 2nd September, 2015 for release of title deeds to the Petitioner, which was not complied with. In these circumstances, the directions of this Court for release of title documents to the Petitioner was warranted. Therefore, this erroneous submission, though finds mention in the said order, is of no consequence and cannot be a ground for recalling the order dated 8th November, 2021. 13. The apprehension of the applicants/legal representatives of Respondent Nos. 3 and 4 that the Petitioner has acted in breach of the statement made before this Court on 8th November, 2021 (at paragraph no. 7) does not survive, in view of the categorical statement made by the subsequent purchasers i.e., the newly impleaded Petitioner Nos. 2 to 6, acknowledging the pendency of the appeal before DRT as well as the present writ proceedings.

14. Therefore, in view of the above, this Court finds no ground to recall the order dated 8th November, 2021.
15. It is needless to state that the auction sale of the subject property shall remain bound by the final outcome of the said appeal, in accordance with law. This Court further directs that in case Petitioner Nos. 2 to 6 undertake any further sale of the subject property, during the pendency of the appeal before DRT, the factum of the pendency of the said appeal proceedings will be duly recorded in the sale documents executed in favour of the subsequent purchasers.
16. The Appeal No. 09/2008 filed by the deceased Respondent Nos. 3 and 4 has since been re-numbered as Transfer Appeal No. 36/2022 and is pending adjudication before DRT-I. In view of the fact that the appeal was filed in the year 2008 and has remained pending adjudication for more than 15 years, this Court deems it appropriate to direct the DRT-I to hear and decide the said appeal and pending applications expeditiously and not later than a period of three (3) months from today, in accordance with law. It is made clear that we have not expressed any opinion on the merits of the said appeal. All rights and contentions of the parties are left open.

17. With the aforesaid directions, the present application CM APPL. No. 40032/2022 is disposed of.

CM APPL. Nos. 65947/2023, 65975/2023 and 38245/2022

18. In view of the orders passed in CM APPL. 40032/2022, no further orders are required in the present applications and the same are accordingly disposed of.

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19. In view of the order passed in CM APPL. No. 40032/2022 in W.P.(C) 10710/2021, this Court finds no grounds for initiating contempt proceedings. Accordingly, the present petition is dismissed.

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