

Supreme Court of India

*Justice M. R. Shah, Justice B. V. Nagarathna.*

**SRS Advertising & Marketing Pvt. Ltd. v. Mr. Kamal Garg**

Civil Appeal Nos.1302-1303 OF 2022

16.02.2022

**Constitution of India, Art. 226 – Writ filed interim order of the DRAT not granting stay from auction – Challenge was regarding nongrant of any interim relief pending the appeal before the DRAT – Main appeal was yet to be considered by the DRAT on merits – High Court, appears to have decided and disposed of the writ petition as if the High Court was considering the final decision of the DRAT – Therefore, the High Court as such has gone beyond the scope and ambit of the proceedings before it and has as such made the proceedings before the DRAT infructuous, as after the impugned judgment and order nothing further is required to be decided by the DRAT – Therefore, the High Court has exceeded in its jurisdiction by passing the impugned judgment and order.**

Petitioner Counsel: RITESH KUMAR

**JUDGEMENT**

**M. R. Shah, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 22.11.2021 passed by the High Court of Delhi in Writ Petition (Civil) No.12530 of 2021 and in Review Petition No.197 of 2021, the original Respondent No.2 has preferred the present appeals.

2. That Respondent No.1 herein – original writ petitioner was the auction purchaser, who purchased the properties which were auctioned in pursuance of Recovery Certificate No.6/2016 which was in favour of the Corporation Bank (now merged with the Union Bank of India) for a sum of Rs.85 lakhs. The reserved price of the properties was fixed at Rs.54 lakhs. Respondent No.1 – original writ petitioner made the highest bid of Rs.85 lakhs. After making the said bid and after making the earnest money deposit to the tune of Rs.21,25,000/ (being 25% of the bid price) Respondent no.1 – the original writ petitioner moved an application before the Recovery Officer seeking some clarity in the matter. The same was replied to by the Bank. However, thereafter the Recovery Officer dismissed the application of the petitioner on 28.11.2019 and forfeited 10% of the amount deposited by him.

2.1 Aggrieved by the order of the Recovery Officer, Respondent No.1 herein had preferred an appeal being Appeal No.21 of 2019 before DRTII, Delhi on 19.12.2019. The said appeal came to be dismissed by the DRTII vide order dated 18.03.2020. Thereafter Respondent

No.1 herein original writ petitioner preferred an appeal bearing No.91 of 2019 before the DRAT challenging the order of DRT dated 18.03.2020. The DRAT, however did not grant any interim relief to him and consequently Respondent Bank herein sought to put the property to auction on 10.11.2021. The application to seek interim relief from the DRAT was renotified on 17.11.2021 i.e. after the date of the proposed auction and therefore apprehending that his interim relief application would become infructuous, Respondent No.1 herein preferred the present writ petition before the High Court. Though the appeal before the DRAT was pending and what was challenged before the High Court was with regard to not granting any interim relief against the auction, by the impugned judgment and order the High Court has disposed of the writ petition by granting one further opportunity to the original writ petitioner to deposit the balance amount along with the damages quantified at Rs.5 lakhs. The High Court has passed the following order:

*"13. In the aforesaid circumstances, we grant one opportunity to the petitioner to deposit the balance amount along with damages quantified at Rs.5 Lakhs, within the next two weeks. The deposit shall be made with the respondent bank within the aforesaid period. In case, the deposit is made in these terms, the respondent bank shall proceed to deliver the possession of the properties to the petitioner. The Recovery Officer is directed to release the 25% of the amount deposited by the petitioner with him, along with up to date interest, within the next 10 days to the respondent Bank, and to confirm the sale. The Recovery Officer shall take all steps under the law to perfect the title of the petitioner."*

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, original respondent No.2 – original borrower has preferred the present Civil Appeal Nos. 13021303 of 2022.

2.3 After the judgment and order dated 22.11.2011 passed in Writ Petition (C) No.12530 of 2021, a review petition was filed which has been dismissed by the High Court which is the subject matter of Civil Appeal Nos.13021303 of 2022.

3. We have heard learned counsel for the respective parties and perused the impugned judgment and order.

3.1 Having gone through the impugned judgment and order passed by the High Court, we are of the opinion that the same passed by the High Court is unsustainable.

3.2 The High Court has not properly appreciated the fact that what was challenged before it was regarding nongrant of any interim relief pending the appeal before the DRAT. Main appeal was yet to be considered by the DRAT on merits. From the impugned judgment and order passed by the High Court, it appears that the High Court has decided and disposed of the writ petition as if the High Court was considering the final decision of the DRAT. The order passed by the DRT confirming the order passed by the Recovery Officer forfeiting 10% amount deposited by the auction purchaser was yet to be decided by the DRAT. Therefore, the High Court as such has gone beyond the scope and ambit of the proceedings before it.

3.3 By passing the impugned judgment and order the High Court has as such made the

proceedings before the DRAT infructuous, as after the impugned judgment and order nothing further is required to be decided by the DRAT. Therefore, the High Court has exceeded in its jurisdiction by passing the impugned judgment and order.

4. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court is/are hereby quashed and set aside. Now, the DRAT to finally decide and dispose of the Appeal No.91 of 2019 in accordance with law and on its own merits. DRAT is directed to finally decide and dispose of the said appeal at the earliest, preferably within a period of four months from the date of the receipt of the present order.

Present appeals are accordingly Allowed to the aforesaid extent. No costs. SS