

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

WA No. 05/2023

MR. DUK NATH NEPAL

APPELLANT (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

For Appellant : Mr. Pratap Khati and Ms. Pema Dechen Bhutia, Advocates.

For Respondents No. 1 and 2 : Mr. Zangpo Sherpa, Addl. Advocate General with Mr. Sujan Sunwar, Asst. Govt. Advocate.

For Respondent No.3 : Mr. A.K. Upadhyaya, Senior Advocate with Ms. Sushtika Rai, Advocate.

For Respondents No. 4 and 5 : None appears.

Date: 08/06/2023**CORAM:**

**HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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ORDER : (per the Hon'ble, the Chief Justice)

In our order dated 18th April, 2023, we had provided the appellant an opportunity to secure a sum of ₹ 32,00,000/- (Rupees thirty two lakhs only) by way of cash-security to the satisfaction of the Registrar of this Court, in the event he desired for an order for stay of recovery proceedings.

Today, when the matter is taken up for consideration, the Registry hands over to us an affidavit which was affirmed on 03rd June, 2023, wherefrom it appears that the appellant has deposited the said amount of ₹ 32,00,000/- (Rupees thirty two lakhs only) in the office of the Registrar General, High Court of Sikkim.

The only issue which the appellant is trying to raise before us is that the property-in-question — which the Recovery Officer is trying to recover – was never mortgaged with the Bank, in the first place. Since this was the only issue

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involved — as observed in our order dated 18th April, 2023 — we had proposed to give an opportunity to the respondent-Bank to make its stand clear before this Court — on the basis of record — as to whether the property-in-question was at all mortgaged by the respondent-Bank or not. However, this issue is still not clear to us and the Bank should spell out its stand clearly in this regard.

As such, we grant the respondent-Bank, a further opportunity to come up before this Court with a clear answer, only in respect of this issue, on the next date.

In the meanwhile, there shall be a stay of recovery of proceedings being initiated by the Bank against the appellant, upon taking into consideration the deposit made by the appellant in terms of our order dated 18th April, 2023, with the Registrar General of this Court.

List this matter for further consideration on 06th July, 2023.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

jk/ds/ami