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DIRECTOR'S STRIDHAN ATTACHED TO REPAY COMPANY'S DEBTS

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The Securities Appellate Tribunal, Mumbai (SAT) passed an order in *Ravikiran Realty India Ltd & Ors v SEBI*, Misc App. Nos. 90 & 382 of 2019 with Appeal No. 231 of 2018 (Order) on 6 March 2020 attaching *stridhan* of a female director in recovery proceedings against the appellant company.

Stridhan (literally: 'woman's wealth') is a gift made to a woman, whether during maidenhood (prior to marriage), during the subsistence of marriage, or after. *Stridhan* may comprise jewellery and cash, though there is no prohibition against it consisting of immovable property. This gift or bequest may be made by the woman's parents or their relations, or her husband and his relations. The traditional intention behind *stridhan* was to provide a level of financial security to the woman in her matrimonial house.

Under the Hindu Succession Act 1956, *stridhan* is considered a woman's absolute property. Though the concept of *stridhan* is unique to Hindu law, there is a similar system of vesting women with absolute property of their own, under Muslim law. This takes the form of *mahr* or dower, i.e. a sum of money which is paid by a groom to his bride as consideration for marriage. As is the case with *stridhan*, *mahr* can be utilised by a Muslim woman as desired.

Background

Ravikiran Realty India Ltd (Company) had issued redeemable preference shares through the private placement process to more than 49 persons – this is in violation of company law stipulations requiring an issuance of shares to 50 persons or more to be made through the public issue route. Consequently, the Securities and Exchange Board of India (SEBI) deemed this transaction to be a public issue. In its order dated 9 March 2016, the SEBI directed the Company and its promoters/directors (collectively, Defaulters) to refund the money collected from investors, along with interest.

However, since the Defaulters failed to comply with the above directions, recovery proceedings for a sum of INR 13.1 million were initiated against them and bank accounts of the Defaulters were attached. Aggrieved by the said attachment orders, an appeal against the same to the SAT was preferred by the Defaulters.

Manisha Chatterjee, an ex-director of the Company, was among the Defaulters. Her bank accounts consisted of lockers containing *stridhan* in the form of jewellery.

Arguments Advanced

Ms Chatterjee argued, *inter alia*, that *stridhan* cannot be attached nor can dues be recovered from *stridhan*.

In support of her argument, she relied on the 2016 decision of the Delhi High Court in *Sushila Devi v CIT* [234 (2016) DLT 253] (*Sushila Devi*). In this case, the High Court had held that a wife's *stridhan* cannot be used for recovering dues from the husband.

Ruling

The SAT held that there is no bar against utilizing *stridhan* to repay the Company's debts when the woman is in default herself, by virtue of having been a director.

In response to Ms Chatterjee's arguments, the Tribunal distinguished the decision in *Sushila Devi* on facts since in that case it was a question of recovery being made against the husband and jewellery of the wife was taken into consideration, while in the present case recovery was sought from her in her capacity as a Defaulter. The SAT observed that, in any case, whether the contents of Ms Chatterjee's bank lockers were *stridhan* property or not is a question of fact required to be proved before the recovery officer and hence not one which the SAT can go into at the stage of appeal.

The unique character of *stridhan* property was noted by the SAT. In relation to this, the Tribunal referred to the Supreme Court decision in *Pratibha Rani v Suraj Kumar*, 1985 (2) SCC 70, (*Pratibha Rani*) which held that *stridhan* is a woman's absolute property, and if it is in the custody of husband or in-laws, they will be deemed to hold it in trust for her and are bound to return it to her on demand. Thus, the SAT's ruling does not interfere with the fundamental principle of *stridhan* in so far as the fact that it belongs to the woman alone.

Comment

There have been several legislative developments which have enabled married Hindu women to overcome societal barriers and own property of their own. For instance, the Hindu Women's Right to Property Act 1937 placed the widow of a coparcener in the coparcener's position upon his death, thereby empowering her to claim a share in the coparcenary and even demand partition. The most significant change was ushered in by the Hindu Succession (Amendment) Act 2005 which entitled the daughter of a coparcener to become, by birth, a coparcener in her own right just as a son would have. Similarly, the legislative developments and judicial pronouncements pertaining to *stridhan* have both formalized and strengthened Hindu women's rights to property.

The Law Commission of India released a consultation paper on 'Reform of Family Law' in 2018 (Consultation Paper). The Consultation Paper alluded to the case of underage marriages, where the ruling in *Pratibha Rani* gains increased significance (which held that family members of the woman must act only as 'trustee' of *stridhan*); this is necessary to ensure that women are not denied access to their *stridhan* once they attain majority. The Consultation Paper reiterates that *stridhan*, being a woman's absolute property, cannot be made a part of coparcenary property. This precludes any indirect attempts by which a woman's husband, or his family members may seek to control *stridhan* property.

Pratibha Rani, *Sushila Devi* and similar judgments are consistent in recognizing that a woman is the absolute owner of *stridhan* and it is hers to do with as she likes. A woman is free to apply her *stridhan* as she desires. However, there is no bar against *stridhan* being utilized for recovery of dues owed by the woman herself. This has been held in several decisions (*Hari Mohan Rai v Ganesh Chander Das*, (1884) Cal HC; *Nathubhai v Javher*, (1876) 1 Bom 121; *Govindji v Lakmidas*, (1880) 4 Bom 318; *Narotam v Nanka*,

(1882) 6 Bom 473). The Order, while not citing any of these cases, follows this line of reasoning.

From an asset protection perspective, the key takeaway is that the critical question is 'who is in default?' – for instance, if the defaulting party was the husband, the wife's *stridhan* could not be utilized to repay his debts, even if the *stridhan* had been bequeathed by him to his wife in the past. The Order reiterates that *stridhan* is a woman's absolute property and is consistent with older decisions. Therefore, when the woman is in default, given that *stridhan* belongs to her, there is no prohibition against *stridhan* being utilized to repay her debts. Additionally, it is always advisable that care is taken to properly record such gifts as *stridhan*.

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