

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

+ W.P.(C) 2420/2007

Date of Decision: 25th February, 2008

HEMI

..... Petitioner

Through Mr. Anil Amrit, Mr. Anil Kumar,
advs.

versus

UOI & ORS.

..... Respondent

Through Mr. Pankaj Batra, adv. for UOI
Mr. Habibur Rahman for Mr.
Saleem Ahmed, adv. for R-2.
Mr. C. Mohan Rao, adv. for R-3
Mr. Ajay Monga, adv. for R-4

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment? Not Necessary
2. To be referred to the Reporter or not? Not Necessary
3. Whether the judgment should be reported in the Digest? Not Necessary

Per Thakur, J(oral)

In this petition for a writ of certiorari the petitioner has assailed the constitutional validity of Section 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and sought quashing of an order dated 27th April, 2005 passed by ADJ-cum-CMM, Delhi in relation to plot No. J-116, Malviya Nagar Extension, Saket Residential Scheme, New Delhi of which the petitioner claims to be the owner.

2. During the pendency of these proceedings the dues outstanding against R-5, the alleged borrower and alleged owner and mortgagor of the property mentioned above, have been cleared by the said respondents. Learned counsel appearing for R-4 bank today submits, on instructions, that the entire outstanding amount recoverable by the bank on account of loan transaction between R-4 and R-5 stands fully paid and nothing remains outstanding in the said account to call for

any further proceedings by the bank under the Act mentioned above. He further states that the proceedings already instituted against property No. J-116, Malviya Nagar Extension, Saket Residential Scheme, New Delhi had resulted in take over of the possession of the plot by the receiver which has subsequently been restored to R-5.

3. Learned counsel for the petitioner, on the other hand, submits that the entire process of the alleged take over of possession and its subsequent restoration of R-5 is only a paper formality without actual possession having ever been taken over by either the bank or the receiver. He drew our attention to paras 2 & 4 of the additional affidavit filed by R-5 in which the said respondent has stated:

“2. That the deponent submits that after filing of the Counter Affidavit, the deponent also perused the affidavit filed by the DDA and also made inquiries from the office of DDA in respect of allotment of plot No. J-116, Malviya Nagar Extension, Saket, New Delhi. It has been revealed that the said plot being plot No. J-116, Malviya Nagar Extension, Saket, New Delhi, was actually allotted to the Petitioner, namely, Hemi s/o Suneri and not to Hemi s/o Busan. It is also revealed that the deponent was actually cheated by Mohd. Aslam Siddiqui and his associates and that the Sale Deed executed by Hemi s/o Busan in favour of the deponent was actually executed on the basis of forged documents of ownership.

3. XXXXXX

4. That the deponent neither had nor has any right, title or interest over the property bearing No. J-116, Malviya Nagar Extension, Saket, New Delhi.”

4. It was argued that in the light of the clear admission on the part of R-5 that he has no title to the plot in question and that he had been cheated by one Mohd. Aslam Siddiqui and his associates in getting a sale deed executed in respect of the said plot even when the seller had no title to the property in question. There was no question of taking over possession from R-5 or restoring possession to him

especially when the said respondent himself admits having nothing to do with the plot in question.

5. We have given our careful consideration to the submission made at the bar and perused the record. The challenge to the constitutional validity of Section 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 does not, in our opinion, survive for consideration in the light of the subsequent developments. It is also evident from the submissions made at the bar that the entire controversy arose on account of non-payment of the dues by R-5 to R-4 bank which dues have now been fully paid. The affidavit filed by R-5 further leaves no manner of doubt that he had no interest in the plot in question and that he had been duped by Mohd. Aslam and his associates. Such being the position we see no reason why the plot owned by the petitioner of which he claims to be in possession should have been taken over or possession thereof restored to R-5 particularly when the said respondent does not even support that version, and admits that he is not in possession of the said plot nor was ever in possession of the same.

6. In the result, we allow this petition but only to the extent that order passed by the ADJ-cum-CMM dated 27th April, 2005 shall stand quashed. The respondents shall not, without adopting due process of law, interfere with the possession of the petitioner over plot No. J-116, Malviya Nagar Extension, Saket Residential Scheme, New Delhi

7. No Costs.

T.S. THAKUR,J

ARUNA SURESH, J

FEBRUARY 25, 2008/anb