

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

+ W.P.(C) 7199/2007

Date of Decision: 22nd January, 2008

GOYAL TEXTILES Petitioner

Through : Mr. Manish Jain, Adv.

versus

UNION BANK OF INDIA & ORS. Respondents

Through : Mr. Shailendra Ojha,adv. for R-1
Mr. Suresh Kait, Adv. for R-6

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)

Aggrieved by the measures taken by respondent No.1 under Section 13(2) and 13(4) of the Securitization and Enforcement of Security Interest Act, 2002, the petitioner who is a tenant in the property mortgaged with the Bank as collateral security for repayment of the debt borrowed by respondent No.3 to 5 has preferred an appeal before the Debt Recovery Tribunal (DRT). The said appeal was accompanied by an application for an ad interim stay also. Since however the DRT was not holding its sittings on a regular basis, the petitioner apprehended that he may be dispossessed from the property in its occupation pursuant to the measures taken by the respondent bank. The

petitioner, therefore, approached this Court by way of the present writ petition for not only an interim protection against his eviction from the property in question but also challenging the vires of Sections 13 and 17 of the Act aforementioned on the ground that the said provisions do not provide for a remedy to a person aggrieved of an order prior to his/her dispossession from the property which he/she may be holding in his/her own right.

2. By our order dated 28th September, 2007, we had protected the petitioner against eviction from the property in its occupation as a tenant making it clear at the same time that the receiver shall be free to take symbolic possession of the property subject to the ultimate outcome of the appeal pending before the DRT as also the present writ petition. We had also directed the DRT to expeditiously hear and dispose of the appeal and the application filed by the petitioner.

3. Learned counsel for the parties today submit that the DRT has not been able to hear and finally dispose of the appeal or the accompanying application. Even so, it is, according to learned counsel, for respondent No.1 bank unnecessary to keep the present writ petition pending in this court in the light of the appeal that has been filed before the Tribunal. The same could, therefore, be disposed of with suitable directions for continuance of the protection granted by this Court till the disposal of the appeal.

4. Mr. Jain, counsel appearing for the petitioner has no objection to that course being followed provided the petitioner is

given the liberty to re-agitate the issues regarding the vires of the provisions of Sections 13 and 17 of the Act in case the DRT takes a view against the petitioner.

5. In the circumstances therefore and keeping in view the submissions made at the bar, we dispose of this writ petition with the direction that the DRT shall expeditiously dispose of the appeal filed before it. We further direct that the interim arrangement made by this Court in terms of order dated 28th September, 2007 restraining the respondents from interfering with the petitioner's actual physical possession over the property shall continue till the disposal of the appeal by the Tribunal. We make it clear that in case the judgment which the Tribunal may deliver eventually goes against the petitioner, the petitioner shall have the liberty to challenge the said order and also question the constitutional validity of Sections 13 and 17 in a fresh petition that it may file. The parties are left to bear their own costs.

T.S. THAKUR,J

ARUNA SURESH, J

JANUARY 22, 2008
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