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

+ **W.P.(C) 216/2014**

KUMAR ALUMINIUM LTD.

..... Petitioner

Through: Mr. M. Dutta and Mr. Arvind Sharma,
Advocates

versus

**ASSET RECONSTRUCTION COMPANY (INDIA)
LTD. & ORS**

..... Respondents

Through: Ms. Pratiti Rungta for Mr. Sumit Pargal,
Advocates for R-1 & 2
Mr. Rajat Malhotra, Adv. for R-3 & 4

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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29.01.2015

1. The learned counsel for respondent no.3 and 4 submits that since the said respondents are proforma respondents, he has instructions not to file the counter affidavit(s) on their behalf. The said statement is taken on record.

2. This is a writ petition, in which, the following prayer has been made :

“..a). Issue an appropriate writ, order or direction, including a writ in the nature of certiorari or any other order, writ or direction thereby calling for records of the respondents and restore factory premises being 340/1 and 340/46, Amrit Steel Compound, Friends Colony, Industrial Area, Delhi back to the petitioner together with the plants and machineries therein and stocks taken possession on 03.10.2012..”

3. The parties are at lis as to what is that area which, respondent no.1, has taken possession of.

3.1 Respondent no.1, throughout, both before the DRT and this court, has taken the stand that it has not taken possession of the land located at 340/1 and 340/46, Friends Colony Industrial Area, Delhi.

3.2 It is the stand of respondent no.1 that it has taken possession of land falling in the same area earmarked as 340/47 and 340/48. It may also be noted that respondent no.1 avers that the said parcels of land i.e., 340/47 and 340/48 were mortgaged by a sister concern of the writ petitioner, i.e., one, Kuan International Ltd.

3.3 It is not disputed by the counsel for the writ petitioner that proceedings under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI) were taken out in respect of the very same issue. This proceeding is numbered as : SA 527/2012.

3.4 It is also not disputed; which is also a fact, which is discernible from the order dated 30.01.2014, passed in IA No.1114/2013, in SA 527/2012, that those, proceedings are pending. While passing the order dated 30.01.2014, the DRT had made, inter alia, the following observations :-

“..This application has been filed by the applicant herein praying therein to restore / revert peaceful possession of the properties / asset taken forceful possession of the property in question being 340/1, Friends Colony, Industrial Area, G.T. Road, Delhi and appoint a local commissioner to visit the factory premises and prepare inventories.

In this matter possession is stated to have been taken by the

other side and as per judgment passed by the Hon'ble Apex court possession can only be restored after evidence is lead by both the parties. Let both parties may file their respective evidence in the main S.A. thereafter the issue of restoration of possession will be considered by this Tribunal.

With above observation, IA No.1114/2013 is hereby disposed of.

The Id. Counsel for respondent FI is directed to file reply to this SA within 30 days with advance copy of the same to the Id. counsel for the applicant before the next date of hearing.

Matter be listed on 16.05.2014 before Registrar for completion of pleadings...”

3.5 The learned counsel for the petitioner says that the demarcation report of Patwari, which is appended at page 106 of the writ petition, would establish that respondent no.1, has taken possession of the parcels of land, which is earmarked as : 340/1 and 340/46, contrary to what has been stated before this court.

3.6 As indicated above, respondent no.1 disputes this position. It is also the stand of respondent no.1 that the report was prepared without visiting the site in issue and without notice to it.

4. Having regard to aforesaid circumstances, it is clear that these are matters of evidence, which as indicted by DRT, will be determined in SA 527/2012. Therefore, the writ petition is disposed of with liberty to the parties to have the issue determined finally, in those proceedings.

RAJIV SHAKDHER, J

JANUARY 29, 2015

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