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

+ **W.P.(C) 5196/2016**

MUAAZ HASAN KHAN Petitioner

Through: Mr. H.K. Dhariwal, Adv.

Versus

RITA TIWARI & ORS Respondents

Through: Ms. A. Sharma, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.05.2016**

CM No.21615/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) No.5196/2016 & CM No.21614/2016 (for stay)

3. The petition seeks to restrain the respondent no.3 Oriental Bank of Commerce (OBC) from selling property No.F-156/S-2, Second Floor, Dilshad Colony, Delhi-110 095 or from dispossessing the petitioner therefrom, on the ground that he is a tenant under the respondents no.1&2 who have mortgaged the said property with the respondent no.3 OBC.
4. The writ petition is listed subject to office objection as to maintainability thereof.
5. Though the counsel for the respondent no.3 OBC appears but without any instructions. She states that she tried to obtain instructions but could not get instructions as Mr. Mishra from the Head Office of the respondent no.3 OBC informed her that the official concerned was not available.
6. The advance copy of the writ petition is shown to have been served on the advocate for the respondent no.3 OBC on 27th May, 2016 and the

counsel for the respondent no.3 OBC if appearing on advance notice ought to appear with instructions. Else, the whole purpose of appearing on advance notice is defeated.

7. On the assurance of the counsel for the respondent no.3 OBC that she will take up the matter with the respondent no.3 OBC to ensure that instructions are received while appearing on advance notice, at this stage, I do not deem it appropriate to pass any further orders in this regard.

8. The counsel for the petitioner states that the writ petition is maintainable because in accordance with para 24 of the recent judgment of the Supreme Court in *Vishal N. Kalsaria Vs. Bank of India* (2016) 3 SCC 762, the petitioner being a tenant at a monthly rent of Rs.3,000/- is covered by the Delhi Rent Control Act, 1958 and his possession is protected.

9. The counsel for the petitioner further states that the petitioner as per the judgment of the Supreme Court in *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd.* (2014) 6 SCC 1 is unable to approach the Debt Recovery Tribunal (DRT) and the respondent no.3 OBC instead of initiating the proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and in which the petitioner could have filed objections, before the Chief Metropolitan Magistrate, is proceeding to auction the property and notice whereof for 1st July, 2016 has already been published.

10. It is obvious from the above that as of today there is no threat of dispossession of the petitioner even if a tenant in the premises and the cause of action for this petition is the auction notice.

11. The petitioner, even if a tenant in the property, ought not to be

concerned whether the respondents no.1&2 are the landlords or the auction purchaser becomes the landlord. The petitioner, as a tenant has no right to interfere with the auction as the same does not affect his rights as a tenant.

12. As and when there is any threat to the possession of the petitioner, the petitioner would be entitled to avail of the appropriate remedies.

13. I may even otherwise record that the petitioner, save for a photocopy of a rent agreement which is unregistered, has not produced anything else to show his tenancy or even his possession of the property. Such rent agreement for a period of three years from 20th March, 2015 to 19th March, 2018 ought to have been by a registered document and the unregistered document otherwise compulsorily registrable is inadmissible in evidence. Though the petitioner claims to have paid security of Rs.10,00,000/- but that also is claimed to have been paid in cash and no proof of source of the said sum of Rs.10,00,000/- has been shown. The counsel for the petitioner on enquiry, whether the petitioner is income tax assessee, answers in the affirmative; however he is unable to state whether the said sum of Rs.10,00,000/- was shown in the income tax return. Even the rent is claimed to have been paid in cash only and no proof thereof also is produced. There is nothing to show that the petitioner, in pursuance to the rent agreement is in possession of the property.

14. No interference in the respondent no.3 OBC exercising its rights under the SARFAESI Act is called for.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

MAY 31, 2016/‘gsr’..

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