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

+ W.P.(C) 4756/2016

GULSHAN KUMAR & ANR

..... Petitioners

Through: Mr. Rajiv Nanda, Advocate with
Mr. Pankaj Singh and Mr. Ashok Kumar Patwa,
Advocates

versus

BANK OF BARODA & ORS

..... Respondents

Through: Mr. Arun Aggarwal, Advocate with
Mr. Taranjeet Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **06.12.2016**

CM APPL. 44899/2016 (exemption)

Allowed, subject to all just exceptions.

CM APPL. 44898/2016 (by the petitioners for extension of time to vacate the subject property)

1. The present application has been filed by the petitioners praying inter alia for extension of time to vacate the subject premises being occupied by them and to modify the order dated 23.05.2016.

2. On 23.05.2016, the petitioner No.1 had made a statement for himself and his brother, petitioner No.2 and had given a series of undertakings to the Court, as recorded in para 8 of the said order. The first undertaking was to the effect that the petitioners shall hand over the peaceful physical possession of the portions of the subject property to the respondents/Bank on or before 31.12.2016. The said undertakings were duly accepted and the

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petitioners were bound down to the same. Thereafter, the petition was dismissed while issuing certain clarifications, as detailed in para 11 of the order dated 23.05.2016. Sub clause (e) of para 11 of the said order had recorded that the petitioners shall hand over the vacant peaceful physical possession to Mr.Rakesh Jha of the respondent No.1/Bank or any other transferee/purchaser authorised by the Bank, on or before 31.12.2016. The petitioners were also given liberty to participate in the sale process of the subject premises.

3. Within one week from the date of passing of the order dated 23.5.2016, on 30.05.2016, the parents of the petitioners had filed an application for seeking impleadment in the disposed of petition, claiming inter alia that the undertakings given by their sons to vacate the suit premises and hand over possession thereof to the respondent No.1 should not come in the way of their exercising rights in the property. The predecessor court had observed that the request of the applicants could be considered only on their giving an undertaking as recorded in the previous order and submitting an undertaking of Shri Devraj, the other brother of the petitioners and additionally paying a sum of Rs.10,000/- per month towards use and occupation charges and Rs.50,000/- towards costs of legal proceedings to the respondent No.1/Bank. While passing the aforesaid order, it was directed that the Receiver appointed by the court of the learned CMM should not take possession of the suit premises on the next day and instead, await the orders of the court.

4. On 01.06.2016, the applicants, namely, the parents of the petitioners and their brother, Shri Devraj gave undertakings to the Court to hand over

vacant, peaceful and physical possession of the entire property, on or before 31.12.2016, as was already given by the petitioners earlier. Their undertakings as recorded in the earlier order were also recorded in the order dated 01.06.2016, so as to bind down the parents of the petitioners and Shri Devraj. Furthermore, the statements of the applicants, Shri Devraj, and the petitioner No.1 for self and for petitioner No.2 were recorded to the effect that besides them, none else is in possession and control of the suit premises and they shall hand over the possession of the same to the respondent No.1/Bank on or before 31.12.2016.

5. In the teeth of the aforesaid orders, the present misconceived application has been filed by the petitioners stating inter alia that grave prejudice would be caused to them if they are made to vacate the subject premises as a One Time Settlement is being explored by the borrower/respondent No.2 with the respondent No.1/Bank, which is likely to be finalized soon. The said One Time Settlement, if any, between the respondents No.1 and 2 cannot be a ground for the petitioners to continue occupying the subject premises. The petitioners and their family members are bound by the undertakings given by them, as recorded in the earlier orders.

6. The prayer made in the application is declined. The application is dismissed, as being devoid of merits.

HIMA KOHLI, J

DECEMBER 06, 2016

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