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

+ LPA 701/2016 & CM No.46356/2016 (*stay*)

GULSHAN KUMAR & ANR

..... Appellants

Versus

BANK OF BARODA & ORS

..... Respondents

+ LPA 25/2017 & CM No.646/2017 (*stay*)

GULAB SINGH & ANR

..... Appellants

Versus

BANK OF BARODA & ORS

..... Respondents

Present: Mr. Kirti Uppal, Sr. Adv. with Mr. Anubhav Mehrotra,
Mr. Siddharth, Mr. Harsh Chopra N. And Mr. Neeraj Bhushan,
Advs. along with Mr. Gulshan Kumar, Appellant No.1-in-
person.
Mr. Arun Aggarwal, Adv. for R-1.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
27.02.2017

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Ms. G. ROHINI, CHIEF JUSTICE:

1. Both these appeals are directed against the orders passed by the learned Single Judge on the Miscellaneous Applications in WP (C) No. 4756/2016.

2. The said writ petition was filed by the appellants in LPA No. 701/2016, i.e. Gulshan Kumar and Khajan Singh who were aggrieved by the order dated 04.05.2016 passed by the Chief Metropolitan Magistrate, North District, Rohini Courts, Delhi on an application filed by the Bank of Baroda under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFESAI ACT). By virtue of the said order, a court receiver was appointed to take possession of property bearing No. B-2/18, Sector 11, Rohini, Delhi and to hand over the same to the secured creditor/Bank of Baroda.

3. By order dated 23.05.2016, W.P.(C) No.4756/2016 was disposed of recording the undertaking given by the petitioners. The operative portion of the said order including the undertaking given by the writ petitioners may be reproduced hereunder for ready reference:

"8. The Petitioner No.1 for himself and on behalf of his brother Petitioner No.2 Mr. Khajan Singh undertakes to this Court:-

(i) to handover vacant peaceful physical possession of the portions aforesaid of the property on or before 31st December, 2016.

(ii) to pay electricity and water charges of the premises till the date of vacation.

(iii) not to induct any other person(s) into possession of the said portions or to part with possession in favour of any other person.

(iv) to pay compensation for use and occupation of the said portions to the respondent no.1 Bank at the rate of Rs.5,000/- per month by petitioner no.1 and at the rate of Rs.4,000/- per month by the petitioner no.2 w.e.f. the month of May, 2016 and till the month of vacation of

their respective portions in advance for each month, month by month, by the 15th day of the month; the amount for the month of May, 2016 shall be paid along with the amount due for the month of June, 2016."

9. Needless to state that the petitioner no.1 being an Advocate understands the consequences of breach of undertaking given to the Court. 1

10. The undertaking of the two petitioners is accepted and the petitioners are ordered to be bound thereby.

11. The petition is dismissed with the following clarifications:-

(a) the respondent no.1 Bank shall in accordance with the impugned order of the Chief Metropolitan Magistrate take possession of the ground floor and of any other portions of the property except the portions aforesaid in possession of the two petitioners except the terrace/roof;

(b) subject to the petitioners complying with their undertaking, the possession of the portions aforesaid in possession of the petitioners shall not be taken till 31st December, 2016;

(c) however if the petitioners or any of them are in default of their undertakings aforesaid, the respondent no.1 Bank, besides initiating proceedings against the petitioners for breach of undertaking given to the Court, shall be entitled to take possession immediately;

(d) the aforesaid will not come in the way of the respondent no.1 Bank taking further steps for sale, transfer etc. of the property and/or of selling/transferring the property and in which case the petitioners shall remain bound to in accordance with their undertaking give possession to the purchaser/transferee from the respondent no.1 Bank;

(e) the petitioners shall hand over vacant peaceful physical possession to Mr. Rakesh Jha of the respondent no.1 Bank or to any other person of the transferee/purchaser authorised by the said Mr. Rakesh Jha on or before 31st December, 2016;

(f) the petitioners shall be entitled to participate in the proceedings if any undertaken by the respondent no.1 Bank for sale of the property; however, the said participation and/or any disputes arising therefrom shall not affect the undertaking given by the petitioners and with which the petitioners shall remain bound.

(g) the liability of the petitioners hereunder shall be joint and several.”

4. Thereafter, the Appellants in LPA No.25/2017, i.e. Shri Gulab Singh and Smt. Lakshmi Devi, stated to be the parents of the writ petitioners/Gulshan Kumar and Khajan Singh filed CM Nos. 21527/2016 and 21528/2016 for impleadment as parties to W.P.(C) No.4756/2016 and seeking modification of the order dated 23.05.2016.

5. The said Applicants also along with their other son, by name Devraj, undertook before this Court to handover vacant physical possession of the entire portion of the property on or before 31.12.2016 in compliance with the earlier undertaking given by the writ petitioners. Accordingly, the said applications were disposed of by order dated 01.06.2016 with the following clarifications/directions:

“(I) Subject to the applicants, Mr. Devraj and the petitioners complying with their undertakings, the respondent No.1 BoB shall till 31st December, 2016 not take possession of property No.18, Pocket-2, Block-B,

Sector-11, Rohini, Delhi in accordance with the order of the Chief Metropolitan Magistrate (CMM);

(II) However, if the applicants, Mr. Devraj or the petitioners or any of them are in default of any of their undertakings as recorded hereinabove and as recorded in the order dated 23rd May, 2016, the respondent No.1 BoB, besides initiating proceedings against the applicants, Mr. Devraj and the petitioners for breach of their undertakings, shall also be entitled to take possession of the property immediately;

(III) The aforesaid will not come in the way of the respondent No.1 BoB taking further steps for sale or transfer etc. of the property and / or selling or transferring of the property and in which case the applicants and the petitioners shall remain bound to, in accordance with their undertakings, give possession to the purchaser / transferee from the respondent No.1 BoB;

(IV) The applicants, Mr. Devraj and the petitioners shall handover vacant, peaceful and physical possession of the property to Mr. Rakesh Jha, Chief Manager of the respondent No.1 BoB or to any purchaser / transferee authorised by Mr. Rakesh Jha, Chief Manager of the respondent No.1 BoB on or before 31st December, 2016;

(V) Mr. Rakesh Jha, Chief Manager of the respondent No.1 BoB for the purpose of taking over possession of the premises may visit the premises on 1st January, 2017 at 1100 hours, if vacant, peaceful and physical possession of the premises is not delivered earlier;

(VI) The applicants, Mr. Devraj and the petitioners shall be entitled to participate in the proceedings undertaken by the respondent No.1 BoB for sale of the property; however, the said participation and / or any dispute arising therefrom shall not affect the undertaking given by the applicants, Mr. Devraj and the petitioners and with which they shall remain bound;

(VII) The liability of the applicants, Mr. Devraj and the petitioners shall be joint and several.”

6. Surprisingly, the writ petitioners/Gulshan Kumar and Khajan Singh came up with another application being CM No.44898/2016 seeking extension of time to vacate the subject property. By order dated 06.12.2016, the learned Single Judge dismissed the same observing that the application is misconceived as the applicants/petitioners and their family members are bound by the undertakings given by them which were duly recorded by the Court in the earlier orders. It was also observed that the possibility of exploring "one-time settlement" cannot be a ground for the applicants/petitioners to continue in occupation of the subject premises.

7. Similar application being CM No. 48077/2016 came to be filed by Sh.Gulab Singh and Smt. Lakshmi Devi/the parents of the writ petitioners seeking extension of time and modification of the order dated 01.06.2016 in CM Nos.21527/2016 and 21528/2016. One Mr.Desraj, stated to be the brother of the writ petitioners, was also arrayed as one of the applicants. The said application was dismissed by the learned Single Judge by order dated 23.12.2016 making it clear that the applicants are bound by the undertakings given by them earlier.

8. Assailing the order dated 06.12.2016 in CM No.44898/2016, the writ petitioners/Gulshan Kumar and Khajan Singh filed LPA No.701/2016 whereas the parents/Shri Gulab Singh and Smt. Lakshmi Devi filed LPA No.25/2017 assailing the order dated 23.12.2016 in CM No. 48077/2016.

9. We have heard Shri Kirti Uppal, the learned Senior Counsel appearing for the Appellants in both the appeals as well as Shri Arun Aggarwal, the learned counsel appearing for the Bank.

10. The only ground upon which the Appellants seek intervention in this intra Court appeals is that the learned Single Judge should have granted the relief as prayed for since the Appellants had never disputed their liability but only sought extension of time for vacating the property. It is also submitted by Shri Kirti Uppal, the learned Senior Counsel that the Appellants made a buy-back proposal of the property in question against payment of Rs.85.82 Lakhs and it would be appropriate to direct the Bank to consider the said proposal.

11. The learned counsel appearing for the Respondent No.1/Bank of Baroda, on instructions, submitted that the proposal of the Appellants is not acceptable to the Bank and the said fact was already communicated to the Appellants. It is also submitted by him that in spite of the fact that the time granted by this Court in terms of the undertaking of the petitioners and their parents expired long back on 31.12.2016, the Bank could not take the physical possession of the premises till date and that the present appeals being nothing but an attempt to gain time are liable to be dismissed in *limine*.

12. Admittedly, the Appellants themselves had undertaken to handover the vacant possession of the property in question on or before 31.12.2016. Basing on the said undertaking, by order dated 23.05.2016, they were allowed to continue in possession till 31.12.2016. Be it noted that the application of the Bank under Section 14 of the SARFAESI Act was allowed on 04.05.2016 itself appointing a receiver to take the possession and

hand over the same to the Bank. It is also relevant to note that not only the writ petitioners but their parents and brother as well had undertaken before this Court to vacate the property by 31.12.2016. Having taken advantage of the order passed by this court on the basis of their own undertaking, we are of the view that the Appellants are precluded from asking for extension on any ground whatsoever. As rightly held by the learned Single Judge in the orders under appeal dated 06.12.2016 and 23.12.2016, the Appellants are bound by the undertakings given by them. By furnishing the said undertaking, they elected to avail the protection from eviction from the property in question and enjoyed the said protection till date. Having done so, they cannot be permitted to seek further indulgence of this Court by way of intra Court appeal under Clause 10 of the Letters Patent.

13. Both the appeals are accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J.

FEBRUARY 27, 2016

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