$~40

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

\+ W.P.(C) 2468/2017 & CM No. 10683/2017 (stay)

SHEKHAR CHOPRA ..... Petitioner

Through Mr. Manoj Bhandari, proxy counsel for Mr. Sanjeev Bhandari, Advocate

versus

ICICI BANK LTD. ..... Respondent

Through None

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

<u>O R D E R</u>

% 27.03.2017

This appeal is directed against an order dated 9.3.2017 passed by the learned Debts Recovery Appellate Tribunal, Delhi in Misc. Appeal No. 120/2017. The order impugned is extracted herein below for convenience:-

> "Issue notice to respondent on the waiver application subject to appellant making a deposit of at least 25% of the amount of debt claimed from him by the bank in its notice under Section 13(2) of the SARFAESI Act, with the Registrar of this Tribunal on or before 21.3.2017 by which time the DRT has permitted the appellant to remain in possession of the property in question.
>
> Notice be issued for 21.3.2017. *Dasti* service is also allowed in addition to other modes of service like Speed Post/Registered A.D.Post. Appellant to file

> tracking report along with affidavit of service at least two days before the next date."

The facts giving rise to this writ petition are enumerated briefly hereinafter.

The petitioner obtained a home loan of Rs. 2.51 crores on 25.10.2002 and additional loan of Rs. 2.29 crores on 16.11.2012. As security for loan facilities granted by the Respondent Bank to the petitioner, the petitioner mortgaged his property at C-568, New Friends Colony, New Delhi-110065, hereinafter referred to as the property in question, to the Respondent Bank.

According to the petitioner, there were irregularities in the operation of accounts. The petitioner sent the legal notice on 5.10.2015 for redressal of his grievances.

It is alleged that the authorised officer of the respondent bank specified the accounts as Non-Performing Accounts, without any intimation to the petitioner and without following the guidelines issued by the Reserve Bank of India, and a demand notice dated 15.10.2015 was issued under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 hereinafter referred to as the Securitisation Act.

The petitioner filed a Civil Suit for mandatory and permanent injunction against the respondent bank, which is pending adjudication before the learned Additional District Judge, Rohini Courts, Delhi. The petitioner also filed a Special Application under Section 17 of the Securitisation Act, hereinafter referred to as ‘SARFAESI ACT” before the Debt Recovery Tribunal-I, New Delhi, which was numbered as S.A No. 107/2016. In course of the proceedings, the petitioner made a request to the authorised officer of the bank to dispose of the basement of the property.

According to the petitioner, for three months, the authorised officer did not take any steps to dispose of the basement. The petitioner thereafter filed an application being IA No. 1165/2016 on 25.8.2016 seeking directions of the learned Debt Recovery Tribunal-I to the Respondent Bank to sell the basement and not to take any coercive measures for eviction of the petitioner from the ground floor.

According to the petitioner, while the application was pending, the respondent bank, through a Receiver appointed by the Court of the learned Chief Metropolitan Magistrate, again issued notices dated 9.1.2017 and 12.1.2017 threatening to take actual physical possession of the entire property.

After receipt of the notice, the petitioner filed another application being IA No. 95/2017 before the learned Debts Recovery Tribunal for disposal of its earlier application No. 1165/2016 and for orders restraining the Respondent Bank from taking measures to take possession of the remaining property.

By an order dated 20.1.2017, the learned Debts Recovery Tribunal-I passed an order, directing that the learned Receiver/Respondent Bank might issue fresh notice after making appropriate corrections to the notice that had been issued. Thereafter, the learned Receiver issued another notice dated 31.1.2017 threatening to take actual physical possession on 16.2.2017 after which the petitioner filed another IA No. 203/2017 before the learned Tribunal.

It is pleaded that the respondent bank did not file any reply to the main application of the petitioner, under Section 17 of the Securitisation Act before the learned Debts Recovery Tribunal-I, nor any reply to the interim applications filed by the petitioner.

On 14.2.2017, the said IA No. 203/2017 was taken up for arguments. After hearing detailed arguments at length, the learned Tribunal dismissed the said application being IA No. 203/2017 on grounds stated in the order passed on that date. The learned Tribunal, however, deferred the scheduled date for taking possession of the property in question from 16.2.2017 to 21.3.2017 considering that the daughter of the petitioner was appearing for her Board examinations in March, 2017.

Being aggrieved by the order dated 14.2.2017, the petitioner filed an appeal being Misc. Appeal No. 120/2017 before the Debts Recovery Appellate Tribunal, Delhi.

The Debts Recovery Appellate Tribunal passed the impugned order directing the petitioner to deposit at least 25 % of the amount of debt claimed by the respondent bank in the notice under Section 13(2) of the Securitisation Act with the Registrar on or before 21.3.2017 as condition precedent for interim protection.

The petitioner contends that the petitioner has voluntarily given physical possession of the entire basement. According to the petitioner, the basement is sufficient for recovery of the alleged dues of the respondent bank. Significantly the petitioner has not been able to procure any buyer for the basement. The contention that the basement would be sufficient for recovery of the entire dues of the respondent bank is not supported by any cogent materials. On the other hand, it is contended by the Respondent Bank that the property in question would not fetch adequate price, if the petitioner remained in possession thereof.

There can be no dispute that the petitioner has obtained loans from the respondent bank. The basement as well as the ground floor was offered as security for the said loan. The loan is outstanding. Proceedings were initiated under Section 13 of the SARFAESI for taking possession of the secured assets. The learned Debts Recovery Tribunal out of sympathy, considering that the petitioner's daughter was appearing for the Board Examination, gave the petitioner time till the Board Examination of his daughter was over.

The petitioner appealed against the order of the Debts Recovery Tribunal-I. Section 18 provides for appeal to the Appellate Tribunal from an order under Section 17 of the Securitisation Act. The second proviso to Section 18 provides that no appeal is to be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less.

The third proviso to Section 18 empowers the Tribunal to reduce the amount of pre-deposit to not less than 25% of debt referred to in the second proviso. It is settled law that the amount of pre-deposit can at best be reduced to 25% and no further. Pre-deposit is mandatory. In this case, the learned Tribunal has reduced the amount of pre-deposit to 25% i.e. the minimum under Section 18 of the SARFAESI. The impugned order of the Debts Recovery Appellate Tribunal does not, therefore, call for interference.

However, considering that the petitioner is residing in the ground floor with his family, we deem it appropriate to grant the petitioner the time till 31.5.2017 to vacate the said premises. If in the meantime, the petitioner is able to procure a purchaser for the basement offering a price which covers the dues of the petitioner, the petitioner may be permitted to retain the ground floor. If not, the petitioner will have to vacate within the time allowed by this Court. The respondent bank may also look for purchaser for the basement.

The writ petition and the pending application are disposed of accordingly.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

MARCH 27, 2017
mw