

\$~42

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

+ W.P.(C) 3062/2017 & CM Nos. 13379-80/2017

RAKESH MAHAJAN & ANR. Petitioner
Through: Mr. Sanjeev Bhandari and
Mr. Rakesh Roushan, Advs.

versus

ADITYA BIRLA HOUSING FINANCE LTD. Respondent
Through: Mr. Sanjeev Sagar and
Mr. Navin Arora, Advs.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER
10.04.2017

%

1. We have heard learned counsels for the parties. It appears that the petitioner had approached the Debts Recovery Tribunal by way of an application under Section 17, sub-section (i) of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and had also sought interim relief with regard to the immoveable property which was the subject matter of the petition. The matter was taken up by the DRT on 3rd April, 2017 which, placing reliance on a judgment dated 20th March, 2017 by the Debt Recovery Appellate Tribunal in *Miscellaneous Appeal No. 60/2016 Vikram Bakshi & Company Pvt. Ltd. V. Housing Development Finance Corporation Ltd. &*

Ors., held that the objections of the petitioner in the said application were not maintainable till the secured creditor had taken actual physical possession of the property and therefore, the application was not maintainable and was dismissed (page 47).

2. While dismissing the application by the order dated 3rd April, 2017, the DRT had granted 30 days time to the petitioner to hand over peaceful possession of the property failing which the authorised officer of the respondent-Bank was directed to take possession of the property after expiry of such period.

3. This order of the DRT was assailed by the Finance Corporation by way of Misc. Appeal No.168/2017 (page 46) before the Debts Recovery Appellate Tribunal. When the appeal came up for hearing on 6th April, 2017, while issuing notice to the respondents, an ex-parte order was granted to the Finance Corporation staying the permission granted to the petitioner to retain possession for 30 days.

Aggrieved thereby, the present writ petition has been filed laying a challenge to the vacation of the interim protection granted by the order dated 3rd April, 2017 of the DRT.

4. The writ petition came up for consideration on 7th April, 2017 when notice was issued to the respondent for today and the order of the DRAT dated 6th April, 2017 was also suspended.

5. We note that so far as the 30 day period granted by the order dated 3rd April, 2017 is concerned, the same has not come to an end till date and would only end on or about the 2nd of May, 2017.

6. Mr. Sanjeev Sagar, learned counsel appearing for the respondent submits that the respondent's appeal being Misc. Appeal No.168/2017 is listed for hearing before the Debt Recovery Appellate Tribunal today.

7. The order dated 20th March, 2017 passed by the Debt Recovery Appellate Tribunal in *Miscellaneous Appeal No. 60/2016 Vikram Bakshi & Company Pvt. Ltd. V. Housing Development Finance Corporation Ltd. & Ors.* has been challenged before us by way of W.P.(C) No.2966/2017. We have today issued notice to the respondents in the writ petition and also stayed the effect and operation of the order dated 20th March, 2017.

8. We are not inclined to keep this writ petition pending any longer. However, interests of justice merit that the same interim protection be afforded to the petitioner pending either the disposal of the appeal or the period of 30 days granted by the Debt Recovery Appellate Tribunal whichever is earlier.

In view thereof, the writ petition is disposed of with the direction that the interim protection granted by the order dated 3rd April, 2017 shall continue over a period of 30 days with effect from the date of that order.

It is made clear that nothing herein contained is an expression of opinion on the merits of the contentions of either party, either in the proceedings before the Debt Recovery Tribunal or in the appeal. It shall also be open for the parties to avail such legal remedies as are available to them in accordance with law.

This writ petition and application are disposed of in the above terms.

Copy of this order be given dasti to counsel for the parties under the signatures of the Court Master.

GITA MITTAL, J

ANIL KUMAR CHAWLA, J

APRIL 10, 2017/kr