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

\+ W.P.(C) 4943/2017 and CM APPL. 21374/2017

JAYA RATHORE & ORS ..... Petitioners

Through: Ms. Bindu Das, Advocate with Mr. Vijay Rathore, husband of petitioner No.1 in person.

versus

DENA BANK ..... Respondent

Through: Mr. Karan Khanna, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% 30.05.2017

1. The petitioners are aggrieved by the order dated 11.05.2017 passed by the learned DRAT, dismissing the appeal filed by them against the order dated 13.04.2017 passed by the DRT, disposing of their application challenging the measures taken by the respondent/Bank under Sections 13(2) and 13(4) of the SARFAESI Act by proposing to take over physical possession of the two secured assets offered by the petitioners No.1 and 2 to the respondent/Bank for the loans extended to the petitioners No.3 and 4/proprietorship firms.

2. Counsel for the petitioners concedes that strictly speaking, no legal issue has been raised in the present petition for our consideration and this is more in the nature of a mercy petition, whereunder the petitioners seek some reasonable time to clear the outstanding dues payable to the respondent/Bank. She submits that it is the Bank's version that as on 28.09.2015, a sum of Rs.73,14,690.14 paise was due and payable. Out of

the said amount, the petitioners have already paid back a sum of Rs.30 lakhs (approx.) to the respondent/Bank.

3. Counsel for the respondent/Bank, who appears on advance copy, states that the outstanding amount payable by the petitioners as on 31.03.2017, would be somewhere around Rs.80 lakhs. He states that sufficient leeway was given to the petitioners by both, the learned DRAT and the DRT to liquidate the outstanding amount but they have not been able to do so. By now, symbolic possession of two properties, namely, (a) Property bearing House No.XII/5058, Ground Floor, admeasuring 110 sq. yards situated at Gali Chaman Ganj, Roshanara Road, Delhi-110007 owned by the petitioner No.1 and (b) Property bearing No.1212 & 1214 (Ward No.12) admeasuring 48 sq. yards (with roof rights) situated at Shora Kothi, Subzi Mandi, Delhi-110007, owned by the petitioner No.2, have been taken over by the respondent/Bank through the Receiver.

4. Learned counsel for the petitioners states on instructions that the petitioners do not have enough liquidity to clear the remaining loan amount but they are ready and willing to hand over vacant physical possession of the property mentioned at Sr.No.(a) above, for the respondent/Bank to auction the same. However, some reasonable time is prayed for to vacate the said premises.

5. In view of the submission made by the counsel for the petitioners, the petitioners are granted time upto 18.06.2017 to vacate the subject shop and hand over physical possession thereof to the Receiver appointed in that regard. The petitioners shall file their separate affidavits by tomorrow, undertaking inter alia to make compliances as recorded above with a copy furnished to the counsel for the respondent/Bank.

6. On the Receiver taking over possession of the subject shop, the respondent/Bank shall take immediate steps to invite public bids for auctioning the shop to liquidate the balance loan amount. If the sale proceeds received on conducting the auction are more than the amount due and payable by the petitioners, after appropriating the amount due, the balance amount shall be paid to the petitioners. The petitioners shall be at liberty to participate in the said bid.

7. It is directed that if the petitioners comply with the orders passed above by 18.06.2017, then the respondent/Bank shall not take any coercive steps against them or against the other property. However, in case of any default on the part of the petitioners in handing over possession of the premises mentioned at Sr.No.(a) above, the respondent/Bank shall be entitled to approach the Receiver for taking over physical possession of both the properties.

8. At this stage, counsel for the petitioners states on instructions that the petitioners are making sincere efforts to generate funds to liquidate the entire balance amount due and payable to the respondent/Bank. If that happens, then the respondent/Bank shall not take any coercive steps in respect of either of the two properties got attached by it.

9. The petition is disposed of alongwith the pending application.

DASTI to the parties.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 30, 2017/rkb