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

+ **W.P.(C) 4600/2017 and CM 20101/2017 (stay)**
W.P.(C) 4621/2017 and CM 20140/2017 (stay)

ABHINAV KUMAR

..... Petitioner

M/S SONIA HOSPITAL PVT LTD

..... Petitioner

Through : Mr. Pankaj Vivek and
Ms. Manisha Mehta, Advocates with
petitioner in person in W.P.(C) 4600/2017 and
Mr. Pradeep Kr. Lathar, Director of the petitioner
firm in W.P.(C) 4621/2017.

versus

ORIENTAL BANK OF COMMERCE

..... Respondent

Through : Mr. S.K. Garg, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **25.05.2017**

1. The appellants are aggrieved by a common order dated 16.5.2017 passed by the learned DRAT dismissing two separate appeals filed by them against the interim order dated 19.9.2016 passed by the DRT dismissing their application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the **SARFAESI Act**') for restraining the respondent/Bank from taking over the physical possession of two floors (lower ground floor and ground floor) of premises bearing No.C-36, Westend, Diplomatic Enclave Extension, New

Delhi.

2. While dismissing the appeals filed by the appellants, the learned DRAT held that the two separate lease deeds relied upon by the appellants (petitioners herein) reveal that they were executed by the owner/landlord Shri G.R. Kohli on 24.9.2015 for a period of 18 years whereas, the owner/landlord had mortgaged the very same property in favour of the respondent/Bank in the year 2002 to secure the repayment of financial facilities availed of by M/s Krishan Chander Ramesh Chander Pvt. Ltd. wherein, he was a Director.

3. Learned counsel for the petitioners has submitted that the owner/landlord Shri G.R. Kohli had expired after execution of the lease deed dated 24.9.2015 and the advance rent @ Rs.50,000/- per month for the ground floor and Rs.25,000/- per month for lower ground floor had already been paid to him during his lifetime, for a period of 24 months commencing from 1.10.2015. He states that the petitioners were unaware of the litigation between the owner/landlord and the respondent/Bank and it was only on 20.9.2016, when the Receiver had pasted a notice on the subject premises for taking over possession thereof in terms of an order dated 26.7.2016 passed by the learned CMM on an application filed by the respondent/Bank under Section 14 of the SARFAESI Act, that the petitioners became aware of the pending litigation. Immediately thereupon, the petitioners had filed applications before DRT-II, wherein interim relief for stay of dispossession was prayed for. The said applications were opposed by the respondent/Bank and vide order dated 19.9.2016, the prayer for interim protection was turned down, which order has been upheld by the learned DRAT under the impugned order.

4. Learned counsel for the petitioners contends that the respondent/Bank has already taken over symbolic possession of the subject premises but the petitioners are entitled to enjoy the possession for the reason that their tenancy still subsists and they are ready and willing to pay the rent to the respondent/Bank.

5. We are of the opinion that the subject premises, which is situated in a prime colony in South Delhi can by no stretch of imagination fetch a meagre rent of Rs.50,000/- p.m. for the ground floor and Rs.25,000/- p.m. for the lower ground floor.

6. Learned counsel for the respondent/Bank states that his officers had visited the subject premises only yesterday and found that the second floor is occupied by a tenant and it is fetching a rent @ Rs.2.75 lakhs per month, which gives a good indication of what the market rent of the two floors under the occupation of the petitioners ought to be. He further states that contrary to the claim of the petitioners that they are using the ground floor for residential purposes and the lower ground floor for storage, a full-fledged office is being run from the lower ground floor.

7. We have enquired from learned counsel for the petitioners that during the pendency of the applications filed by the petitioners before the DRT, which have yet to be adjudicated upon finally, would his clients be ready and willing to pay the market rate towards use and occupation in respect of the two floors in question. Having regard to the fact that the ground floor has the additional advantage of a garden/open area, parking etc., it would naturally fetch a higher rent than the second floor, of atleast Rs.3.00 lakhs p.m. (approx.), through counsel for the respondent/Bank pegs it at Rs.4.00 lakhs per month and the lower ground floor that is being used for non-

residential purposes would fetch rent of atleast Rs.1.00 lakh per month, which as per the other side, should be in the range of Rs.2 lakhs per month. After obtaining instructions from his clients, learned counsel gives his consent to the figures suggested by us as above.

8. Accordingly, it is directed that subject to the petitioners paying a sum of Rs.3.00 lakhs per month towards the use and occupation charges in respect of the ground floor and a sum of Rs.1.00 lakh per month towards the use and occupation charges of the lower ground floor of the subject premises w.e.f. September, 2016, the respondent/Bank is restrained from taking any coercive steps in respect of the subject premises during the pendency of the applications filed by the petitioners and pending adjudication before the DRT.

9. As for the arrears, after adjusting the advance rent stated to have been paid by the petitioners in respect of the ground floor and the lower ground floor in terms of the lease deeds dated 24.9.2015 executed with late Mr. G.R. Kohli, they shall pay the balance amount to the respondent/Bank in two equal instalments, the first one payable by 15.06.2017 and the second one by 15.07.2017. The month to month use and occupation charges at the rate mentioned above shall be paid by the petitioners w.e.f. May, 2017. The amount due for May, 2017 shall be deposited with the respondent/Bank on or before 10.6.2017. Thereafter, the use and occupation charges shall continue to be paid by the petitioners to the respondent/Bank on a month to month basis, on or before the tenth day of each month, till the decision of the pending SAs No. 60-61/2016, filed by the petitioners before the learned DRT-II.

10. The parties shall appear before the learned DRT-II on the date fixed, i.e., 11.7.2017. The learned DRT-II is requested to expedite the hearing in the pending applications and take a decision preferably within two months from 11.7.2017.

11. The petitions are disposed of along with pending applications. It is made clear that we have not expressed any opinion on the merits of the case and as the aforesaid order has been passed in the peculiar facts and circumstances of the present case, the same shall not be treated as a precedent in any other case.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 25, 2017
sk/rkb/ap