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

\+ W.P.(C) 5876/2017 and CM APPL. 24508-24511/2017

RAJESH MANCHANDA AND ANR ..... Petitioners

Through: Mr. Sanjay Goswami, Advocate with Mr. K. Bhimraj Achary, Mr. Anoop Prakash Awasthi, Advocates and petitioners in person.

versus

CANARA BANK AND ANR ..... Respondents

Through: Mr. Vijay Kumar, Advocate for R-1.
Mr. Sanjeev Bhandari, Advocate for R-2 and R-3.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **14.07.2017**

1. The petitioners are aggrieved by the order dated 11.07.2017 passed by the learned DRAT in an appeal filed by them against an order dated 29.06.2017 passed by the DRT-III, Delhi in S.A. No.78/2013. By the impugned order, the learned DRAT has called upon the petitioners to deposit 50% of the debt claimed by the respondent No.1/Bank in its notice dated 22.12.2011 issued under Section 13(2) of the SARFAESI Act and has observed that only thereafter, shall their prayer for protection of the mortgaged assets be examined.

2. Mr. Goswami, learned counsel for the petitioners argues that the demand notice dated 22.12.2011 issued by the respondent No.1/Bank under Section 13(2) of the SARFAESI Act had stated inter alia that as on the date of issuance of the said notice, a sum of Rs.5,24,06,505.39 paise together

with interest @ 17% including 2% penal interest is payable and therefore, the said figure has to be accepted as the final figure and keeping in mind the fact that after issuance of the captioned demand notice, the petitioners and the other guarantors including the respondent No.2/company have jointly/severally paid a sum of Rs.3,03,85,385/-, as confirmed by the respondent No.1/Bank in the statement of account pertaining to the respondent No.2/company (Annexure P-3 colly.), which is far in excess of 50% of the debt specified in the demand notice, the learned DRAT ought not to have directed the petitioners to deposit any further amount.

3. Mr. Vijay Kumar, learned counsel for the respondent No.1/Bank, who appears on service of advance copy, disputes the submission made by the other side and clarifies that the demand notice itself refers to interest payable on the principal amount of Rs.5,24,06,505.39 paise and by now, the said interest factor if added to the principal amount would have mounted to Rs.5,20,00,000/- (approx.), after giving the adjustment of the Rs.3,03,85,385/-, received by the Bank after 22.12.2011. He clarifies that the petitioner No.1, 3, 4 and 5 are brothers and all of them were Directors of the respondent No.2/company that was extended a loan and they had also stood as guarantors in respect of the said loan in their personal capacity. Therefore, the Bank is well entitled to make recoveries from all the parties in accordance with law for non-payment of the loan amount extended to the respondent No.2/company whose account has since been declared as NPA and steps initiated to attach its secured assets and those of the guarantors. It is in this background that the respondent No.1/Bank has decided to take over the possession of the residential premises of the petitioners that was offered as a secured asset before auctioning the same.

4. Mr. Goswami, learned counsel for the petitioners responds by stating that the respondent No.1/Bank has not taken any steps to realise monies by disposing of the hypothecated goods of the respondent No.2/company, which in the year 2014, were worth Rs.5 crores. The said submission is however refuted by learned counsel for the respondent No.1/Bank, who states that there is a serious dispute raised by the respondent No.3, Managing Director of the respondent No.2/company with regard to the ownership of the said goods and they were not found lying at the premises of the company and have been relocated to a premises owned by the respondent No.7, who happens to be the wife of the respondent No.3. Till the said issue is resolved, the respondent No.1/Bank is not in a position to take any steps to dispose of the said goods. He states that the respondents No.1, 3, 4 and 5 (brothers) are at loggerheads and repeated requests by the Bank to them to approach it jointly and amicably resolve the dispute has not elicited any positive response due to which the respondent No. 1/Bank has had to take coercive steps.

5. Having heard the counsels for the parties, we are not inclined to entertain the present petition as we do not see any infirmity in the impugned order directing deposit of 50% of the debt amount. Even after adjustment of the amounts received by the respondent No.1/Bank subsequent to issuance of the demand notice, the outstanding amount is far in excess of 50%.

6. Accordingly, the present petition is dismissed as devoid of merits alongwith the pending applications.

7. At this stage, counsel for the petitioners states that the petitioners along with their children are residing in the immovable property offered as a secured asset and though they were granted 15 days time to vacate the same,

they have not been able to find a suitable alternate accommodation. He states on instructions that both the petitioners shall file their separate affidavits undertaking inter alia to vacate the subject premises alongwith their family members on or before 7.8.2017.

8. In the interest of justice, the petitioners are granted time upto 07.08.2017 to hand over vacant physical possession of the subject premises to the authorised officer(s) the respondent No.1/Bank. While filing the said affidavits, the petitioners shall undertake inter alia that they shall not induct anyone or create any third party interest therein and no one except for them and their two children shall occupy the same. The said undertaking shall be filed by tomorrow with copies furnished to the counsel for the respondent No.1/Bank. If the affidavits are not filed by the petitioners by tomorrow, then this order shall stand automatically vacated. It is also made clear that that no further request for extension of time to vacate the subject premises shall be entertained.

9. The respondent No.1/Bank is directed not to take any coercive steps against the petitioners in respect of the subject premises till 07.08.2017.

DASTI to the counsels for the petitioners and the respondent No.1/Bank.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 14, 2017
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