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

\+ **FAO Nos. 303/2017 & 305/2017**

% **21st July, 2017**

\+ **FAO No. 303/2017**

ORIENTAL BANK OF COMMERCE ..... Appellant
Through: Mr. S.A. Khan, Advocate.

versus

HARMINDER SINGH & ORS ..... Respondents
Through: Mr. Amulya Dhingra, Advocate for R-1.

\+ **FAO No. 305/2017**

ORIENTAL BANK OF COMMERCE ..... Appellant
Through: Mr. S.A. Khan, Advocate.

versus

HARMINDER SINGH & ORS ..... Respondents
Through: Mr. Amulya Dhingra, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 25464/2017 (for exemption) in FAO No. 303/2017
C.M. Appl. No. 25630/2017 (for exemption) in FAO NO. 305/2017

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

FAO No. 303/2017 and C.M. Appl. No. 25462/2017 (for stay)
FAO No. 305/2017 and C.M. Appl. No. 25629/2017 (for stay)

1. These two appeals, being FAO Nos. 303/2017 and 305/2017 are filed by the defendant no. 3 in the suit, Oriental Bank of Commerce, impugning the order dated 15.5.2017 by which the trial Court has allowed the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) filed by the respondent no. 1/plaintiff and directed that the respondent no. 1/plaintiff will not be dispossessed from the suit property during the pendency of the suit. The suit properties are bearing DDA Flat No. 781, ground floor, Pocket GH-13, G-17 Area category II (MIG), Paschim Vihar, New Delhi and SFS Flat No. 1104, third floor (with scooter garage), Pocket GH-13, G-17, Area Paschim Vihar, New Delhi. For the sake of convenience I am referring to the facts in the case of FAO No. 303/2017 for the disposal of both the appeals. The limited issue in the appeals is that the impugned orders are to be sustained but with the modification that dispossession of the respondent no.1/plaintiff is stayed not till the disposal of the suit but dispossession is not to take place without due process of law. The modification is sought because

of entitlement of the appellant/defendant no.3 to get the issue as regards validity of mortgage in its favor by the tribunal/authority/court under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the RDDBFI Act') and/or the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'). In view of the limited issue required to be decided there is no need to grant adjustment as prayed by the counsel for the respondent no.1/plaintiff.

2. The facts of the case are that respondent no. 1/plaintiff pleaded that he had purchased the suit property by means of registered documents dated 21.8.2012 from the respondent no.2/defendant no. 1. Originally both, defendant nos. 1 and 2, were owners of the suit property but respondent no.3/defendant no. 2 had released his share in the suit property in favour of respondent no.2/defendant no. 1 vide Release Deed dated 27.7.2012. Respondent no. 1/plaintiff pleaded that he had possession of all the original title documents of the suit property after purchase of the property on 21.8.2012. It was further pleaded in the plaint that it was only in the month of April 2013 that

the respondent no. 1/plaintiff came to know that the suit property had been mortgaged with the appellant/defendant no. 3. It was further pleaded that the documents in favour of the respondent no. 1/plaintiff were valid documents and there was no valid mortgage in favour of the appellant/defendant no.3 and therefore it made no difference to the rights of the respondent no.1/plaintiff that mortgage of the suit property with the appellant/defendant no.3 is of 27.3.2012 i.e prior to 21.8.2012.

3. The case of the appellant/defendant no. 3 was that the suit property was already mortgaged with the appellant/Bank on 27.3.2012 i.e prior to the execution of the title documents in favour of respondent no. 1/plaintiff on 21.8.2012. Accordingly, it was stated that rights of the respondent no. 1/plaintiff will be secondary to the prior mortgagee rights of the appellant/defendant no. 3 and that action may be taken by the appellant/defendant no. 3 under the SARFAESI Act.

4. The court below has found that there is a triable issue which requires decision, inasmuch as, in the criminal complaint case filed with respect to validity/invalidity of the documents dated 21.8.2012 in favor of the respondent no.1/plaintiff and the genuineness

of the title documents of the suit property in possession of the respondent no.1/plaintiff (FIR No. 180/13 in Mianwali Nagar Police Station), a CFSL report was filed that the original title documents of the suit property with the respondent no. 1/plaintiff are genuine documents and those with the appellant/Bank are not genuine title documents. Accordingly, the injunction application was allowed by restraining the defendants in the suit, including appellant/defendant no. 3 from dispossessing the respondent no. 1/plaintiff from the suit property during the pendency of the suit.

5. In my opinion, the only limited modification which is required in the impugned order is in its para 16 containing the operative portion of the order which states that the respondent no. 1/plaintiff will not be dispossessed from the suit property during the pendency of the suit. Actually the injunction which should have been granted was that the respondent no. 1/plaintiff will not be dispossessed without due process of law. This is because the jurisdiction of a civil court is barred by virtue of Section 34 of the RDDBFI Act and Section 34 of the SARFAESI Act. A civil court cannot decide any issue which will come up for decision before the Debt Recovery Tribunal/authority

under the two Acts with respect to the issues involving loans granted by the Bank. As per Section 17 of the RDDBFI Act it is the Debt Recovery Tribunal as well as the Debt Recovery Appellate Tribunal under the RDDBFI Act which has the authority to decide applications of banks and therefore all issues arising thereunder. Section 34 of the SARFAESI Act also provides that civil court will not have jurisdiction to entertain any suit or proceedings in respect of which the Debt Recovery Tribunal or a Debt Recovery Appellate tribunal is empowered under the SRFAESI Act to determine.

6. The issue which requires determination between the parties is that whether a valid equitable mortgage was created in favour of the appellant/Bank or that there was no valid mortgage and therefore the respondent no. 1/plaintiff has a valid title to the property. Since with respect to this issue, decision can only be of the authorities as prescribed under the RDDBFI Act and the SARFAESI Act, in view of the provisions of Sections 34 of both the Acts and which bar the jurisdiction of the civil courts, it is hence not open to the civil court, before whom the subject suit is pending to decide the issues which are directly or incidental to deciding the issues of recoveries filed by the

banks and actions taken by the banks under the RDDBFI Act and the SARFAESI Act.

7. Learned counsel for the respondent no.1/plaintiff very vehemently argued that a civil court has jurisdiction and in fact the trial court has already dismissed an application under Order VII Rule 11 CPC filed by the appellant/defendant no. 3 that the civil court has no jurisdiction, however, while deciding the application under Order VII Rule 11 CPC, the decision which is taken is only a decision at an interim stage and there is no final judgment with respect to existence or otherwise of jurisdiction of the civil court because the issue of jurisdiction of the civil court has to be decided finally and ordinarily at the stage of framing of issues (as it was a legal issue), and therefore I do not think that the decision of the earlier civil court dismissing the application under Order VII Rule 11 CPC will have any bearing on the present judgment for modifying the impugned judgment to the extent that the entitlement of the respondent no. 1/plaintiff not to be dispossessed is not till the disposal of the suit but only till the disposal of the proceedings under the RDDBFI Act and/or SARFAESI Act in case it is held by the Tribunal/authorities under the Acts that there

exists a valid mortgage in favor of the appellant/defendant no.3 created on 27.3.2012.

8. The order under Order VII Rule 11 CPC should have been before this Court, but none of the counsels for the parties are able to show the same, however, it is trite that the decision under Order VII Rule 11 CPC is not a final judgment with respect to decision of the lack of jurisdiction of the civil court in view of Sections 34 of the RDDBFI Act and the SARFAESI Act.

9. I may note and I take on record the statement of the counsel for the appellant/Bank that the appellant/Bank had filed a case under the RDDBFI Act, which has been decreed, and presently recovery proceedings are going on before the Recovery Officer wherein the respondent no. 1/plaintiff is appearing, and the issue which arises with respect to validity or otherwise mortgage in favour of the appellant/Bank is also very much in *lis* and alive in terms of the objections filed by the respondent no. 1/plaintiff before the Recovery Officer.

10. In view of the above discussion these appeals are disposed of by modifying the operative para 16 of the impugned order

and observing that it is not that the respondent no. 1/plaintiff will not be dispossessed from the suit property during the pendency of the suit but the respondent no. 1/plaintiff will not be dispossessed form the suit property except in accordance with law i.e subject to the decision in the proceedings pending under the RDDBFI Act and/or the SARFAESI Act. Parties are left to bear their own costs.

JULY 21, 2017 **VALMIKI J. MEHTA, J**

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