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

\+ W.P.(C) 7084/2017 & C.M. Nos. 31459-60/2017

SANDHYA AGARWAL AND ANR ..... Petitioners

Through: Mr. Neeraj K. Kaul, Senior Advocate with Mr. Aman Vachher and Mr. Ashutosh Dubey and Mr. Raghav, Advocates.

versus

JAMMU & KASHMIR BANK AND ORS. ..... Respondents

Through: Mr. Rahul Narayanan, Advocate for R-1/Bank.
Mr. Shashank Aggarwal, Advocate for R-2 & 3.

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

O R D E R

% **30.08.2017**

1. The petitioners are aggrieved by the order dated 04.8.2017 passed by the learned DRAT in an appeal preferred by the respondent No.1/Bank against the order dated 25.7.2017, passed by the learned DRT-I, restraining the Bank from taking over physical possession of their residential premises, on their depositing a sum of Rs.50 lakhs along with a cheque for a sum of Rs.1.50 crores, on or before 28.7.2017.

2. It is an undisputed position that the petitioners are in default of the order dated 25.7.2017 passed by the DRT, having paid only a sum of Rs.50 lakhs to the respondent No.1/Bank and having failed to pay a sum of Rs.1.50 crores, on or before the date fixed, i.e., 28.7.2017. Under the impugned order passed by the DRAT, notice was issued to the respondents, returnable on 17.8.2017 and simultaneously, operation of the order passed by the

learned DRT-I, was stayed.

3. Mr. Kaul, learned Senior Advocate appearing for the petitioners states that contrary to the view expressed in the impugned order, the petitioners are not under any legal obligation to assail an order passed by the learned CMM under Section 14 of the SARFAESI Act, 2002, only by filing a petition under Article 226 of the Constitution of India for the reason that the amendments incorporated in Section 14(3) of the said Act, entitle them to approach the DRT under Section 17 of the Act, for appropriate relief against any such order passed by the learned CMM, appointing a Receiver to take over the possession of their residential premises, mortgaged with the respondent No.1 /Bank and proceed to auction the same.

4. Learned counsel for the respondent No.1/Bank opposes the present petition and states that not too long ago, the petitioners had filed a writ petition in this Court, registered as WP(C) No. 7904/2015, challenging *inter alia* a similar order passed by the learned CMM, appointing a Receiver to take possession of the very same residential premises. Notice was issued in the said petition on 19.8.2015 and operation of the order dated 7.7.2015 passed by the learned C.M.M., was stayed. The said petition was finally disposed of on 28.8.2017, as counsel for the petitioners therein had stated that the respondent No.1/Bank had sanctioned a One Time Settlement (in short '**OTS**') proposal made to it. The petitioners had undertaken to abide by the terms and conditions of the said OTS. Under the OTS, the petitioners had agreed to pay a sum of Rs. 38 crores to the respondent No.1/Bank in instalments and had agreed that the entire amount would be paid by 31.12.2017. It is submitted that as on 31.8.2017, the petitioners ought to have deposited a sum of Rs.10 crores with the respondent No.1/Bank, but till

date, they have only paid a sum of Rs.2 crore (approx.).

5. We have enquired from learned counsel for the petitioners as to whether they are willing to make good their default in respect of the OTS by paying the outstanding instalments to the respondent No.1/Bank, for us to consider granting them any interim relief.

6. Mr. Kaul, Senior Advocate states on instructions that the petitioners are not in a financial position to make the payment. He states that in view of the fact that respondent No.1/Bank is proposing to take over the physical possession of the residential premises on 09.9.2017, instead of pressing the present petition, the petitioners propose to approach the DRAT by filing an application for seeking advancement of the date fixed before it on 14.9.2017.

7. If the petitioners file the said application within two days, the learned DRAT is requested to consider the same and pass appropriate orders thereon, in accordance with law. Counsel for the respondent No.1/Bank shall be furnished an advance copy of the application so that the Bank is duly represented before the DRAT.

8. The petition is disposed of as not pressed, along with the pending applications.

9. The next date fixed in this petition stands cancelled.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 30, 2017/ap