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

\+ W.P.(C) 7667/2017

DEEP PARIKH ..... Petitioner

Through: Mr Ashish Bhagat and Mr Akshat Gupta, Advs.

versus

SYNDICATE BANK ..... Respondent

Through: Mr V. Sudeer, Adv.

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

O R D E R

% 01.09.2017

1. The present petition has been filed by the petitioner, assailing an order dated 11.07.2017 passed by the learned DRAT, in an appeal filed by her against the order dated 19.06.2017, passed by DRT-I disposing of her application seeking directions to the respondent-Bank to take possession of two immovable properties situated in Mumbai, mortgaged with the Bank and reinstate her in the residential premises at Safdarjung Enclave, on the ground that it is the only dwelling unit available to her.

2. Vide order dated 11.07.2017, the DRAT has directed the petitioner to deposit at least 25% of the debt claimed by the respondent/Bank under Section 13(2) of the SARFAESI Act, 2002 to the tune of over Rs.12 crore. As per learned counsel for the petitioner, after adjusting a sum of Rs.2.25 crore already paid, a sum of Rs.10 crore was due and payable to the respondent/Bank, as on 04.11.2015.

3. Learned counsel for the petitioner states that the petitioner's husband

is the Managing Director of a company named Fucon Technologies Ltd. wherein the petitioner and her mother are co-directors. For obtaining cash credit limits, the petitioner's husband had mortgaged four properties with the respondent/Bank out of which two are situated in Mumbai and two in Delhi. On account of failure to maintain financial discipline, the said account was declared as NPA on 04.11.2015. Thereafter, the respondent/Bank filed an S.A. before the DRT in the year 2016. On 11.04.2017, an application was filed by the petitioner for restraining the respondent/Bank from taking over possession of the residential premises bearing No.52, Block B-3, 2nd Floor, Safdarjung Enclave, New Delhi came up before the DRT. During the course of arguments, the petitioner who had appeared in person, undertook to surrender to the Bank two of the mortgaged properties situated at Mumbai.

4. Considering the submission made by the parties and in view of the fact that the respondent/Bank was already in possession of one of the four properties situated at Mohammadpur, Delhi, vide order dated 11.04.2017, the respondent/Bank was restrained from taking possession of the residential premises at New Delhi, subject to the petitioner surrendering the other two properties at Mumbai. The petitioner, however, failed to surrender the properties at Mumbai. As a result, the respondent/Bank proceeded to take over the physical possession of the residential premises at Safdarjung Enclave, on 30.05.2017. Aggrieved by the said action, the petitioner filed an application before the DRT-I for reinstatement which came to be dismissed vide order dated 19.06.2017. When she filed an appeal against the said order before the DRAT, the petitioner was directed to deposit 25% of the debt claimed by the respondent/Bank.

5. Counsel for the petitioner states that his client is in a real

predicament as the petitioner's husband had gone missing since 15.09.2015, leaving the entire liability on her shoulders.

6. Learned counsel for the respondent/Bank states that this is nothing but proxy battle that the petitioner is waging on behalf of her husband. The said position can be gleaned from the fact that the securitization notice was received by the petitioner on 31.12.2015 and OA was filed by the respondent/Bank on 09.06.2016. The petitioner elected to file a complaint under the Domestic Violence Act against her husband only thereafter in October, 2016, which was after almost one year from the date when he had allegedly gone missing. Learned counsel for the respondent/Bank states that the fact that the petitioner is aware of her husband's whereabouts was brought before DRT where she had filed a copy of an application filed by her against her husband under the Domestic Violence Act stating *inter alia* that her husband was residing somewhere else in Delhi and she had made efforts to serve him at the said address. The said fact is, however, denied by learned counsel for the petitioner.

7. Be that as it may, having regard to the aforesaid facts and circumstances, we are not inclined to interfere with the order dated 11.07.2017, passed by the learned DRAT. It is left to the petitioner to persuade the DRAT to reduce 25% pre-deposit amount or ask for waiver, which request will be considered as permissible in law.

8. The petition is dismissed *in limine*.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 01, 2017
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