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

+ W.P.(C) 8121/2015

TILAK RAJ TANWAR & ANR

..... Petitioners
Through Mr.Swastik Singh, Mr.Atul Singh and
Mr. Himanshu Dagar, Advocates.

versus

L & T HOUSING FINANCE LTD. & ANR

..... Respondents
Through Ms.Kashish Narang, Adv. for R-1.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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30.08.2017

1 Petitioners are aggrieved by the notice dated 24.6.2015 as also another notice dated 17.8.2015 issued by respondent no.1/L&T Finance Home Loans under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act). The prayer seeks a quashing of the aforementioned notices as also prohibiting respondent no.1 from taking possession of property of the petitioner i.e. the property bearing No.WZ 49/1 B, Naraina Village, New Delhi. Petitioner has placed reliance upon a judgment of the

Division Bench of the Bombay High Court reported as MANU/MH/1523/2015 Kotak Mahindra Bank Ltd. Vs. Trupti Sanjay Mehta and Ors. Writ Petition No.722 of 2015 decided on 16.7.2015 to support his submission that the respondents being a non-banking financial institution cannot invoke the provisions of the SARFAESI Act. This had been noted in the order dated 27.8.2015. In the subsequent order dated 21.01.2016 it had been further noted that this judgment of the Bombay High Court was the subject matter of appeal before the Supreme Court and an interim stay has been granted. The judgment of the Apex Court was being awaited. It is yet awaited. On 02.6.2016, it had been recorded that part possession of the property is with the petitioners and the remaining is in possession of the tenants; status quo qua the property was directed to be maintained; the rents accruing in favour of the petitioner were directed to be deposited with respondent no.1. The respondents were restrained from taking over the possession of the property till further orders.

2 Learned counsel for respondent no.1 points out that the notices challenged in this writ petition are the subject matter of proceedings under the SARFAESI Act; the proper course for the petitioner would be to have filed objection before the DRT under Section 17 of the said Act. This petition is not maintainable.

3 Learned counsel for respondent in support of his submission has placed reliance upon a judgment delivered by the Division Bench of this Court in LPA 784/2014 M/s Sigma Generators Pvt. Ltd. and Anr.Vs. Oriental Bank of Commerce wherein the Division Bench relying upon the judgment of the Apex Court delivered in (2004)

5SCC 762 Devi Ispat Ltd. Vs. State Bank of India had noted that remedy of a writ petition under Article 226 of the Constitution of India is not available against a notice under Section 13(2) owing to the alternative remedy of making a representation under Section 13(3A) being available. Relevant extract of the aforementioned judgment reads herein as under:

“11. The Supreme Court recently in Devi Ispat Ltd. Vs. State of Bank of India (2014) 5SCC 762 was also concerned with a case where immediately after receipt of notice under Section 13(2), a writ petition impugning the same was filed before the Calcutta High Court. A Single Judge of that Court dismissed the same observing that the statutory remedy under Section 13(3A) was available against the notice under Section 13(2). The debtor in that case availed of the remedy under Section 13(3A) as well as of preferring an appeal to the Division Bench of that Court. During the pendency of the appeal, the creditor rejected the representation of the debtor under Section 13(3A). The Division Bench dismissed the appeal, relying on Mardia Chemicals Limited supra. The Supreme Court held that the remedy of a writ petition under Section 13(2) owing to the alternative remedy under Section 13(3A), nothing survived in the dispute raised in the writ petition and the appeal to the Division Bench was misconceived. It was yet further held that since in the interregnum the creditor had also taken steps under Section 13(4), there was no need to interfere with the judgment of the Division bench.

4 In M/s Sigma Generators (supra) the remedy under Section 13(3A) had been availed of yet the Division Bench of this Court was

of the view that the remedy under Article 226 of the Constitution of India was not available to the petitioner. The Court had held that even where the Bank after declaring an account of a party as NPA does not take steps under Section 13(4), the same will not be a ground for quashing a notice under Section 13(2) of the Act; the Statute i.e. the SARFAESI Act lays down a procedure comprising of successive steps for action thereunder and has also provided a remedy against such action, after the final steps is taken, the rule of availability of such remedy being a bar to exercise of jurisdiction under Article 226 which cannot be adequately defeated by invoking a remedy under Article 226 even in the intermediary step and by contending that there is no alternative remedy. This was the view of the Division Bench in that judgment.

5 This Court also notes that the judgment of the Bombay High Court is the subject matter of appeal before the Apex Court in which an interim stay has been granted against that judgment. That apart, the judgment of the Bombay High Court has only a persuasive value; this Court is bound by the directions given by the Division Bench of this Court in the judgment of M/s Sigma Generators Pvt. Ltd. (surpa).

6 Learned counsel for petitioner, at this stage, points out that the judgment in M/s Sigma Generators Pvt. Ltd. (supra) is distinct as in that case the question posed before the Court was not as to whether a non-banking financial institution (NBFI) is entitled to take recourse to proceedings under the SARFAESI Act.

7 Record shows that respondent no.2 had granted a loan to the petitioners; respondent no.1 is the assignee of respondent no.2; it is

the case of the petitioners themselves that respondent no.1 is governed by the RBI Regulations; the notice under challenge is a notice issued to them under Section 13(2) of the SARFAESI Act by respondent no.1.

8 The notices now impugned before this Court being a notice issued under the SARFAESI Act, the petitioners had adequate remedy to challenge the same before the DRT under proceedings under Section 13(3A) of the SARFAESI as also under Section 17 of the said Act. This Court would not be inclined to pass any order on this application. It is for the DRT to take a view as to whether respondent no.1 could have taken recourse to proceedings under the SARFAESI Act or not.

9 The remedy of filing a writ petition is not available to the petitioner; submission of the petitioner that this Court has wide powers under Section 226 of the Constitution of India to exercise discretion where it thinks appropriate would not apply to the facts of the instant case. An alternate efficacious remedy being available to the petitioner in the instant case (which is the proceeding under Section 17 of the SARFAESI Act, this Court is not inclined to entertain this petition.

9 At this stage, learned counsel for petitioner has been advised to withdraw this petition informing him that he could be given a breather of ten days to approach the DRT in this intervening period but he seeks an order on merits. This Court is of the view that the prayer sought for by the present petition cannot be granted by this Court; the appropriate forum is the DRT having been legislated for the said

purpose. It does not lie with the petitioner to choose a forum that he wishes to. Petition is without any merit. Dismissed.

10 All interim orders stand vacated.

INDERMEET KAUR, J

AUGUST 30, 2017

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