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

\+ W.P.(C) 7998/2017 and CM APPL. 32973-74/2017

DEVENDER SINGH TAYAL ..... Petitioner

Through: Mr. Basant Kumar Singh, Advocate with Mr. Amrendra Kumar and Ms. Versha Singh, Advocates

versus

STATE (GOVT OF DELHI ADMN) AND ORS ..... Respondents

Through: None.

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

<u>O R D E R</u>

% **08.09.2017**

1. The present petition has been placed before us on the basis of an urgent mentioning.

2. The petitioner is aggrieved by an order dated 25.08.2017 passed by the learned DRT-III, Delhi, granting him 15 days' time to vacate premises No.A-72, Inderpuri, New Delhi, and to hand over the peaceful physical possession thereof to the Receiver. The petitioner was also directed to file his affidavit on the same day, undertaking *inter alia* to vacate the said premises in question within 15 days. It was made clear in the said order that in the event of default, the respondent No.2/Financial Institution shall be at liberty to take over physical possession of the said premises through the Receiver appointed by the learned CMM.

3. Briefly stated, the facts of the case are that the petitioner's son, Mr.Samrendra Tayal had taken a loan of Rs.4,91,78,000/- from the respondent No.2, towards working capital for his business and in lieu thereof, he had executed a set of documents including Mortgage Deed, Declarations, Receipt, Promissory Note etc. on 03.07.2014. Besides the signatures of Mr. Samrendra Tayal as the borrower, all the said documents also bear the signatures of his wife, Manisha Tayal and his father, the petitioner herein, both described as co-borrowers. It is the version of the petitioner that he was unaware of the aforesaid loan transaction till 25.05.2016, when some employees of the respondent No.2 had visited his residence and demanded payment of the loan amount. The petitioner also received a notice from the Arbitrator appointed by the respondent No.2, calling upon him to appear on 23.06.2016 and on examining the documents served upon him, he claims to have discovered that someone had forged his signatures on the loan documents. On that, the petitioner had tried to search the original title documents of the mortgaged property referred to above, which he had allegedly kept in a box in the house and only then did he discover that they were missing. On confronting his son, Mr.Samrendra Tayal and asking about the whereabouts of the title documents and on not receiving a satisfactory reply, it had dawned on the petitioner that his son had in conspiracy with the officers of the respondent No.2, played a fraud on him and forged his signatures on the Mortgage Loan Agreement, Declarations, Receipt and Promissory Note, all dated 03.07.2014. The petitioner asserts that he had never signed any of the said documents; that no

loan was disbursed to him and he had no knowledge of the loan taken by his son from the respondent No.2, till 25.05.2016.

4. Faced with the aforesaid situation, it is stated that the petitioner had lodged a written complaint dated 17.06.2016, with the DCP, Dwarka, New Delhi. On enquiring as to how would DCP, Dwarka would have had the jurisdiction in the present case when no part of the cause of action had arisen in Dwarka and the petitioner is a resident of Inderpuri, where the mortgaged property is situated, we have not been able to elicit any explanation whatsoever from learned counsel for the petitioner.

5. The petitioner had received a demand notice dated 17.10.2016 from the respondent No.2 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), which he had duly replied to on 03.11.2016, reiterating *inter alia* his stand that all the documents being relied upon by the respondent No.2, were forged and fabricated. Subsequently, in the year 2017, the petitioner had filed a criminal complaint before the learned CMM, Patiala House Courts, New Delhi praying *inter alia* for registering a case against the respondent No.2 and his son with allegations of conspiracy and forgery of his signatures. The petitioner had also filed a complaint under Section 156(3) Cr.P.C., in or around the same time.

6. During the pendency of the arbitration proceedings initiated by the respondent No.2 against the petitioner and both his sons and daughter-in-law, the respondent No.2 moved an application before the learned CMM under Section 14(2) of the SARFAESI Act, for appointment of a Receiver in respect

of the mortgaged property. The said application was allowed by the learned CMM vide order dated 22.07.2017 and a Receiver was appointed to take over the physical possession of the subject premises, being a secured asset, in accordance with law.

7. On the said order coming to the knowledge of the petitioner, he had filed an application before the learned DRT on which the impugned order dated 25.08.2017 was passed, granting him 15 days' time to vacate the said premises. Subsequently, the petitioner had approached the learned CMM by moving an application for seeking recall of the earlier order dated 22.07.2017, which was disposed of vide order dated 05.09.2017 with an observation that the said court could not review its earlier order and nor could it grant any extension of time to the petitioner. It is in the aforesaid background that the petitioner has filed the present petition praying inter alia for quashing the order dated 25.08.2017, passed by the learned DRT.

8. In order to test the bonafides of the petitioner, we have enquired from learned counsel as to whether after lodging a complaint against his son and the respondent No.2 on 17.06.2017, he has taken any steps to turn his son out of the subject property, described as the sole residential house of the petitioner. Learned counsel concedes that no such steps have been taken so far. He clarifies that Mr. Samrendra Tayal and his family and the petitioner's other son, Devendra Tayal and his family are continuing to reside with him in the very same premises. The explanation offered for the same is that the petitioner, who is a senior citizen, aged 83 years, has no other place to shift to at his age and he is not in a position to drive out his son from his house, despite his chicanery.

9. Having regard to the fact that the petitioner took a bold step of lodging a complaint against his son and the respondent No.2 and thereafter, filed a complaint and an application under Section 156(3) of the Cr.PC before the learned CMM, Patiala House Court, New Delhi, both in the year 2017, praying *inter alia* for initiating action against them, we have yet again enquired from the counsel for the petitioner as to whether any civil proceedings were instituted by the petitioner against his son, for seeking his eviction from the subject premises, particularly, in the light of the grave allegations of deception, fraud and forgery levelled against him.

10. Learned counsel admits that no civil suit for eviction has been instituted by the petitioner and only in the first week of September, 2017, has he taken steps to file a suit in this court, for declaring the loan documents referred to above, as forged and fabricated, which has yet to be listed for admission. The petitioner has not even taken any steps till date, to issue a public notice, disowning his son in view of the sharp practices adopted by him.

11. In other words, except for submitting a complaint and that too before the DCP, Dwarka, New Delhi, who has no jurisdiction in the matter and for filing complaints under Section 200 of the Cr.PC and under Section 156(3) of the Cr.PC against the respondent No.2 and his son, the petitioner has not taken any concrete steps to disassociate himself from his son and evict him from the subject premises. Instead, Mrs. Samrendra Tayal is merrily continuing to reside with his family in the very same premises alongwith the petitioner. We may also note that in view of allegations of forgery levelled by the petitioner against his son, the principal borrower, we have carefully examined the relevant loan

documents. On comparing the signatures of the petitioner appearing on the set of loan documents that are all in hindi, with his signatures in hindi, as appearing on his PAN card placed at page 181 of the paper book, it appears from the naked eyes that they are the same. We are therefore, prima facie sceptical about the plea of forgery taken by the petitioner, but are refraining from making any further observation as the proceedings between the parties are still pending and the petitioner will have an opportunity to prove his case before the competent forum.

12. At this stage, learned counsel for the petitioner submits that the ground taken in the present petition with regard to the respondent No.2 not being a financial institution, as defined under the SARFAESI Act in the year 2014, when the loan transaction had taken place, which would have disentitled it from invoking the said enactment to approach the CMM for appointment of a Receiver, must be decided in these proceeding. We see no reason to examine the said plea at this stage when even as per the counsel for the petitioner, the pleas taken in grounds (A) and (B) of the present petition are pending consideration in the SA filed by the petitioner before the DRT. If the petitioner does not succeed before the DRT, he has the option of seeking legal recourse before the appellate forum, i.e., the DRAT.

13. Before parting with the case, having regard to the fact that as on date, the loan amount is stated to have mounted to over Rs.5 crores, we have asked learned counsel for the petitioner if his client is ready and willing to deposit a reasonable amount in court, for us to consider granting him an interim order in respect of the mortgaged property. However, learned counsel for the petitioner

expresses the financial inability of the petitioner to deposit any amount whatsoever.

14. In view of the aforesaid facts and circumstances, we are not inclined to interfere in the impugned order dated 25.08.2017, which is maintained. The appeal is dismissed in *limine* alongwith the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

SEPTEMBER 08, 2017
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