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

+   O.M.P.(I) (COMM.) 392/2017

SUDHA GUPTA ..... Petitioner

Through Mr.Yakesh Anand and Mr.Nimit Mathur, Advs.

versus

PNB HOUSING FINANCE LIMITED & ANR...... Respondents

Through Mr.Ajay Uppal and Mr. Avnish Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

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

%   27.09.2017

1. This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking interim orders to restrain the respondents from making recovery proceedings against the petitioner and other borrowers of the housing loan and also seeking stay of further proceedings under the SARFAESI Act.

2. The case of the petitioner is that the petitioner with her husband had taken a housing loan from the respondents of Rs.1.18 crores for purchase of the property being J-3/7, First Floor, Krishna Nagar, Delhi. Unfortunately, the husband of the petitioner expired on 04.10.2016. It is the case of the petitioner that the respondents had taken an insurance policy from ICICI Lombard which was specifically customised for the petitioner's home loan

application ensuring repayment of the loan. He further submits that taking of the insurance policy was mandatory for the petitioner. It is urged that on the assurance of the respondents, the petitioner and her late husband decided to take a comprehensive insurance policy from ICICI Lombard to secure the loan repayment with an objective to safeguard their interest in the event of any contingency. The petitioner may also make a payment of Rs.4 lacs towards the premium for the comprehensive insurance policy and the said amount of Rs.4 lacs was also paid by the respondents from the loan. The petitioner also alleges that the petitioner has actually signed the documents pertaining to different policy and it is not clear as to how ICICI Lombard has issued a different policy for major medical illness and procedure. It is averred that the respondent had cheated the petitioner and her late husband in collusion with ICICI Lombard. He submits that the Insurance Company has wrongly rejected the claim of the petitioner. He also submits that the petitioner is a widow lady residing with her children in her own house and if she is dispossessed from the said house, she would have no place to reside.

3. The learned counsel for the respondents has opposed the present petition pointing out that the respondents have also taken steps under SARFAESI Act and the petitioner should approach the concerned DRT with her objections as have been stated. He submits that this court cannot stop the statutory proceedings under the SARFAESI Act. He also submits that an arbitrator has already been appointed for adjudication of the disputes between the parties.

4. The petitioner has challenged the action of the Insurance Company before the Consumer Court. Regarding the respondent, the case of the petitioner is that the Insurance Policy was taken on the representation and

behest of the respondent who deducted the premium from the home loan. The balance of convenience is in favour of the petitioner.

5. In another petition being O.M.P.(I) (COMM.) 204/2017, titled ***P.N.B. Housing Finance Ltd. v. Sudha Gupta***, this court has restrained the petitioner from creating third party rights in the concerned property.

6. Keeping in view the above averment, the respondents is restrained from dispossessing the petitioner from the aforesaid premises till the pendency of the arbitration proceedings before the arbitrator or till adjudication of the objections of the petitioner under Section 17(1) of the DRT Act. It is clarified that in the eventuality that the petitioner does not take steps under Section 17(1) of the DRT Act as per law within four weeks, the present stay shall stand vacated.

7. In view of the above, the petition stands disposed of.

8. Dasti.

JAYANT NATH, J

SEPTEMBER 27, 2017
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