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

\+ CS(COMM) 170/2016

ICICI HOME FINANCE CO LTD ..... Plaintiff
Through: Mr. Gautam Singhal, Adv.

versus

RUPENDER KAUR & ORS ..... Defendants
Through: None

AND

CS(COMM) 171/2016

ICICI HOME FINANCE CO LTD ..... Plaintiff
Through: Mr. Gautam Singhal, Adv.

versus

RUPENDER KAUR & ORS ..... Defendants
Through: None

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

% 15.03.2018

1. The plaintiff has instituted these two suits, both against Ms. Rupender Kaur and Shri Onkar Singh, with CS(COMM) 170/2016 being for recovery of Rs.1,62,56,594.14 paise with interest and CS(COMM) 171/2016 being for recovery of Rs.1,06,11,538 with interest.

2. The suits were entertained and summons thereof issued.

3. Neither of the two defendants could be served by ordinary means and the plaintiff applied for substituted service and vide order dated 1st May, 2017, the defendants were ordered to be served by publication in newspaper.

4. Defendants did not appear despite publication and were, vide order dated 2nd November, 2017, proceeded against *ex parte* and the plaintiff relegated to *ex parte* evidence.

5. The plaintiff has examined its Manager in its *ex parte* evidence and has closed its evidence.

6. The counsel for the plaintiff has been heard.

7. The plaintiff in its *ex parte* evidence has proved having rendered financial assistance to the defendants, on security of mortgage by deposit of title deeds of property No. C-3/1, Second Floor, Vasant Vihar, New Delhi-57, vide two agreements, subject matter of respective suits and the defendants having not repaid the loan and the amounts claimed in the suits being due under the respective loan agreements.

8. The suit claims are found to be within time.

9. The counsel for the plaintiff yesterday, during the hearing informed that the plaintiff had also initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI Act) with respect to the mortgaged property but objections under Section 17 of the Act had been filed by the purchaser of the mortgaged property from the defendants in possession of the property and which objections are pending consideration. It was yesterday enquired from the counsel for the plaintiff, whether the remedy of suit as well as under the SARFAESI Act are simultaneously available to the plaintiff for recovery of the same loan amounts. The counsel for the plaintiff had sought time to cite case law on this regard and the suits were posted for today.

10. The counsel for the plaintiff has today drawn attention to ***M.D. Frozen Foods Exports Pvt. Ltd. Vs. Here Fincorp Limited*** AIR 2017 SC 4481 holding on an application of Section 37 of the SARFAESI Act that the remedies for recovery of the loan amount either under the Recovery of Debts due to Bank and Financial Institution Act, 1993 (DRT Act) or by way of arbitration are available simultaneously with proceedings under the SARFAESI Act.

11. The counsel for the plaintiff, on enquiry states that the plaintiff is not a bank and not a notified financial institution to be able to avail the proceedings before the Debt Recovery Tribunal.

12. On the basis of the un-rebutted *ex parte* evidence of the plaintiff, the plaintiff is found entitled to the decree for the claimed amounts.

13. Accordingly, a decree is passed in favour of the plaintiff and jointly and severally against the defendants, in (i) CS(COMM) 170/2016, for recovery of Rs.1,62,56,594.14 paise along with *pendente lite* and future interest at 24% per annum from the date of institution of the suit till realization; and, (ii) in CS(COMM) 171/2016, for recovery of Rs.1,06,11,538 with *pendente lite* and future interest at 24% per annum from the date of institution of the suit till realization.

14. The plaintiff shall also be entitled to costs of both the suits.

Decree sheets be drawn up.

RAJIV SAHAI ENDLAW, J

MARCH 15, 2018

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