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

\+ CM(M) 238/2018 & CM No.7875/2018

MANISH GUPTA & ORS ..... Petitioners

Through: Mr. Jeevesh Nagrath with Mr. Vijayender Kumar, Mr. Pratham Sharma, Mr. Chintan Singhal & Mr. Siddharth Bhatia, Advocates

versus

CHOLAMANDALAM INVESTMENT & FINANCE COMPANY LTD ..... Respondent

Through: Mr. Sanjeev Bhandari, Advocate with Mr. Gaurav Dahiya, AR.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

% 05.03.2018

1. The petition at hand was filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India to assail orders dated 25.01.2018 and 24.02.2018 passed by Chief Metropolitan Magistrate, South East District, Saket Courts Complex on the file of petition (MAC no.21/18) of the first respondent under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), the appropriate remedy against which orders is an appeal under Section 17 before the Debts Recovery Tribunal.

2. At the hearing, it was fairly conceded by the learned counsel on both sides that the petitioner has already approached the Debts

Recovery Tribunal by appeal under Section 17 of SARFAESI Act which is now listed on 23.04.2018. In terms of the interim order passed, more on consideration of equity, on 27.02.2018 by a learned Single Judge, the petitioner had deposited an amount of Rs.42 lakhs with the Registrar General of this Court.

3. After some hearing, it was fairly conceded by both sides that the present petition and the application filed therewith may be permitted to be withdrawn and the petitioner be granted interim protection in terms of the directions in the order dated 27.02.2018 by a week so that they can approach the Debts Recovery Tribunal by way of an application for appropriate interim relief in the context of the appeal under Section 17 of the SARFAESI Act already pending, not only on the issue of propriety in obtaining an order for taking over of physical possession of the residential portion of the ground floor (of course, the contention of the first respondent being that it is entitled to take over the portion which is residential-cum-commercial) and entire first floor of the subject property but also as to the extent of the liability of the petitioners, and in the meanwhile, the amount of Rs.42 lakhs deposited in this Court be released to the first respondent, it being treated as payment made by the petitioners to the first respondent *"on account"*, subject to final decision on the appeal under Section 17 SARFAESI Act. Ordered accordingly.

4. For removal of any doubts, it is clarified that the interim protection in terms of order dated 27.02.2018 will enure in favour of

the petitioners only for a week from the date of this order and thereafter the matter would be regulated as per directions or decision of the Debts Recovery Tribunal.

5. Copy of order be given *dasti* under the signatures of Court Master to both sides.

R.K.GAUBA, J.

MARCH 05, 2018
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