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

% *Date of decision: November 02, 2018*

\+ W.P.(C) 2019/2017, CM No. 8935/2017

MYNA HOMES PVT LTD ..... Petitioner

Through: Mr. Mukul Gupta, Sr. Adv. with Mr. Vibhor Gara, Mr. Deepanshu Panwar, Mr. Saurabh Sapra & Mr. Sumit Mishra, Advs.

versus

UNION BANK OF INDIA AND ORS ..... Respondents

Through: Mr. O.P. Gaggar, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner Company challenging the orders dated November 15, 2016 and December 21, 2016 whereby the DRAT has directed the petitioner to pre-deposit 50% of the amount demanded by the Bank in its notice under Section 13(2) of the SARFAESI Act and on failure on the part of the petitioner to deposit the said amount, dismissed the Misc. Appeal No. 367/2016.

2. Some of the relevant facts are, the respondent No.2 had taken a loan of Rs.7 Crores from the respondent No.1 Bank and mortgaged the property being No. U-29, Green Park Main, New Delhi. It appears that subsequent thereto, the respondent No.2 Ms. Preeti Bansal entered into a Collaboration Agreement with the petitioner on June 03, 2015 with respect to re-construction and development of the said property. Ms. Preeti Bansal failed to repay the loan, which resulted in the respondent No.1 Bank initiating action under the SARFAESI Act. It is a conceded position that Ms. Preeti Bansal has not challenged the notice issued by the respondent No.1 Bank under Section 13(2) of the SARFAESI Act. Rather, it is the petitioner through its Director, Maneet Singh Bhatia had filed the application under Section 17 of the SARFAESI Act. In the application under Section 17 of the SARFAESI Act, the DRT had refused to stay the sale of the property being U-29, Green Park Main, New Delhi. Rather, it directed the Bank to go ahead with the auction after giving 15 days notice to the petitioner herein.

3. The petitioner challenged the order of the DRT before the DRAT. When the matter was listed before the DRAT, an issue arose whether the appeal filed by the petitioner shall be

maintainable in view of the provisions of Section 18 of the SARFAESI Act. The DRAT, noting the fact that the application under Section 17 and the appeal have been signed by Maneet Singh Bhatia, who was also an attorney of the respondent No.2, held that proceedings under Section 17 and the appeal, are as good as having been initiated by the respondent No.2 the borrower and as such it is not an appeal by a third party, as sought to be contended on behalf of the petitioner. According to the DRAT, the plea was advanced only to avoid compliance of mandatory requirement of pre-deposit of 50% of the debt amount. The DRAT also held that the compliance of second proviso to Section 18 of the SARFAESI Act is must before the appeal is entertained, and accordingly directed the deposit of 50% of the demanded amount.

4. Mr. Mukul Gupta, learned Senior Counsel appearing for the petitioner submits that the petitioner being a third party, having entered into a Collaboration Agreement and not a borrower / mortgagor and being aggrieved by the notice issued by the Bank under Section 13(2) of the SARFAESI Act, was within its right to file an appeal and such an appeal cannot presuppose the pre-deposit of 50% of the demanded amount. He has drawn our attention to the

Collaboration Agreement in support of his submission. He also relied upon the judgment of a Coordinate Bench of this Court dated February 01, 2017 in the case of ***Manju Devi & Ors v. M/s R.B.L. Bank Ltd. & Ors W.P.(C) No. 11766/2016*** in support of his submission, that a third party is not required to make a pre-deposit.

5. On the other hand, Mr. O.P. Gaggar, learned counsel appearing for the respondent No.1 Bank opposes the submission made by Mr. Gupta by stating that the DRAT had rightly dismissed the appeal, on failure of the petitioner to make 50% pre-deposit. It is his submission that the mortgage of the property with the Bank was made on December 31, 2013 pursuant to a loan of Rs.7 Crores granted to the respondent No.2. As a matter of fact, the petitioner and the respondent No.2, without the knowledge of the Bank entered into a Collaboration Agreement and also the respondent No.2 granted a General Power of Attorney in favour of the Director of the petitioner No.1 Company on June 03, 2015. He submits that the parties could not have dealt with the land, after the same has been mortgaged with the Bank. He states, in the given facts, it is not a case where this Court must exercise the jurisdiction under Article 226 of the Constitution of India.

6. In rejoinder, Mr. Mukul Gupta submits that the petitioner, in terms of Collaboration Agreement and the General Power of Attorney was required to construct the plot for which the loan was taken. During his arguments, he concedes that the petitioner has a right in the land on which the construction is being made.

7. Having heard the learned counsel for parties, the fact that Maneet Singh Bhatia had filed an application under Section 17 and the appeal as an Attorney of the respondent No.2 has not been denied, by Mr. Gupta. If that be so, the proceedings under Section 17 and the appeal are as good as proceedings initiated by the respondent No.2 the borrower / the mortgagor. It appears that the plea of third party is only taken as a ploy to escape the liability of pre-deposit for filing the appeal. The learned DRAT was justified in dismissing the appeal filed by the petitioner, reasons for which have already been enumerated above. Further, it is not the case of the petitioner, that the Collaboration Agreement or the General Power of Attorney were executed with the approval of the Bank.

8. The reliance placed by Mr. Gupta on the judgment of ***Manju Devi & Ors (supra)*** is concerned, the same is not applicable to the facts of this case. In the said case the petitioners therein have

purchased shop rooms / rooms situated in the premises, which was the subject matter of the SARFAESI proceedings much before the property was mortgaged with the Bank, which is not the case herein, inasmuch as the mortgage with the Bank was earlier to the execution of Collaboration Agreement / General Power of Attorney entered between the petitioner and the respondent No.2. Further, this Court in ***Manju Devi and ors (supra)*** has held as the total deposit would far exceed the amount payable by the borrower, the petitioners therein need not make 50% pre-deposit. The judgment is distinguishable.

9. In the case in hand, in view of the conclusion of the learned DRAT that Mr. Maneet Singh Bhatia was also an attorney of the respondent No.2, the DRAT has rightly directed the pre-deposit before hearing of the appeal; with which conclusion we agree. The present petition filed by the petitioner is without any merit and the same is dismissed.

CM No. 8935/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 02, 2018/*ak*