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

Judgment pronounced on: 7 February 2018

\+ W.P.(C) 7970/2016

CENTRAL BANK OF INDIA ..... Petitioner

Through: Mr. Yogesh Pachauri, Adv.

versus

V.S. AHLAWAT & ORS ..... Respondents

Through: Mr. Pallav Saxena and Ms. Bindu Das, Advs. for R-4
Mr. Vipin Singh, Adv. for R-5

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HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This writ petition is directed against the order dated 2.3.2016, passed by the learned Chief Metropolitan Magistrate (in short "CMM") in complaint case no.376/01/14.

2. The substantive prayer made in the writ petition is as follows:-

> "a) issue a writ, order and direction in the nature of certiorari quashing the order dated 02.03.2016 passed by the learned CMM in CC No.376/01/14 and permit the petitioner bank to take physical possession of the property of the respondent No.2 viz. Flat No.311, Pocket-8, Sector-12, Dwarka, New Delhi."

2.1 As is evident on a perusal of the prayer clause that the petitioner bank is aggrieved by the fact that the impugned order impedes its right to take possession of the subject property. This restraint according to the petitioner bank is in derogation of its statutory right.

3. The grievance of the petitioner bank, thus, emerges in the background of the following brief facts: -

3.1. It is the petitioner's case that respondent no.1/partnership firm applied for loan in and about 3.9.2012. The said loan was sanctioned by the petitioner on 28.9.2012.

3.2. The petitioner avers that respondent no.1/firm via its partners, i.e., respondent nos.2 and 3 executed the necessary security documents.

3.3. Respondent no.4 stood as a guarantor for re-payment of the loan taken by respondent no.1/firm.

3.4. Since, defaults were committed in the re-payment of loan, the loan was classified as a Non-Performing Asset (NPA).

3.5. Accordingly, the petitioner triggered the provisions of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act'). The notice under Section 13(2), dated 21.1.2014, was issued to both the principal borrower, i.e., respondent no.1/firm and the guarantor which included respondent no.4.

3.6 The petitioner avers that symbolic possession of the mortgaged properties was taken on 22.3.2014. Pertinently, it is the petitioner's case that respondent no.4 who, as indicated above, stood as a guarantor, mortgaged his immovable property which is described as: Flat No.311, Pocket-8, Sector-12, Dwarka, New Delhi.

3.7 The petitioner claims that original title deed pertaining to the said property was deposited with the petitioner.

3.8 It is also the petitioner's case that since fraud had been committed by respondent nos.1 to 3 in having a loan sanctioned and disbursed to them by submitting forged and fabricated documents, on 28.5.2014 a complaint was lodged with the Economic Offences Wing, CBI (EOW).

4. The record shows that two FIRs were registered against respondent nos.1 to 3. One of the two FIRs was registered by EOW while the other was registered with P.S. Kapurthala City.

5. I am informed that though a charge sheet has been filed in the FIR registered by the Economic Offices Wing, CBI while the investigation is still pending qua other FIR filed with P.S., Kapurthala City.

6. The net effect of the impugned order is that the petitioner cannot take possession of the properties referred to therein, till investigations are complete in the other matter as well. The impugned order is on the face of it contrary to the direction issued by the learned CMM in his earlier order i.e., order dated 5.11.2014.

7. According to me, the course adopted by the learned CMM was not proper. As correctly noted by the learned CMM in his order dated

5.11.2014 objections, if any, with regard to the taking over of possession could have only been filed before the concerned Debt Recovery Tribunal (DRT).

7.1 As a matter of fact, in order to effectuate the taking over of possession by the petitioner bank, advocate receiver was appointed who was given the necessary powers for effecting possession.

8. The operative directions, which are contrary to the earlier order dated 5.11.2014, are contained in the following part of the impugned order:

> "After hearing the parties and gone through the documents placed on record by both the sides, it becomes clear that the respondent no. 3 had agreed to become guarantor to the loan sanctioned by the petitioner bank to the respondent no. 1. However, the respondent no. 3 has challenged the terms of said loan and stated that the loan documents were manipulated subsequently and moreover, loan sanctioned was embezzled in collusion with the employees of petitioner bank. It is not disputed that two FIRs have been registered in respect of loan transaction, one at PS Kapurthala City and another by CBI. In view of above, this Court is of the view that when the entire loan transaction is subject matter of probe in two FIRs, it would be appropriate if status quo is maintained qua property in question till the conclusion of the investigation. It is observed that even the petitioner bank vide its reply dated 23.03.2015 to the complaint of the respondent no. 3 had replied that since fraudulent acts perpetrated in the borrower account are under investigation, it would be appropriate to wait till outcome of the investigation.

Moreover, from the letter dated 31.03.2014 of the petitioner bank, it is clear that they were well aware about the possession of objector/tenant Amit Sood in the property in question belonging to the respondent no. 3, but since they failed to disclose that fact, even though for a plausible reason furnished, it is required that the possession of the tenant is protected without going into the issue of validity of lease in favour of the said tenant.

During arguments, Id. counsel for petitioner bank had also mentioned that even if no order in respect of the property belonging to the respondent no. 3 is passed, the petitioner bank be permitted to take possession of other two properties i.e. Flat No. C-6/06, Plot No. 5, Sector 12, Dwarka, New Delhi-75 and Flat No. A-503, Crescent Apartment, Sector 18, Dwarka, New Delhi-75. <u>However, as opined earlier, this Court is of the view that when the allegations of fraud and embezzlement of loan with the connivance of bank officials are under investigation, the petitioner bank cannot be given any relief till the outcome of the investigation.</u>

<u>For the aforesaid reasons, the petition of the petitioner bank u/s 14 of SARFAESI Act, 2002, is ordered to be dismissed with liberty to move fresh petition after conclusion of investigation.</u>

(emphasis is mine)

9. The record shows that the aforementioned directions were passed in applications filed by the respondent no.4 herein and his tenant in the subject property; which, according to the petitioner, has been mortgaged to it.

10. A perusal of the aforementioned extract of the impugned order would show that the learned CMM has, in effect, restrained the petitioner bank from taking possession of the properties referred to in

his earlier order dated 5.11.2014 till such time investigation is completed.

11. A plain reading of the operative direction contained in the impugned order would show that it can now, if at all, apply qua the second FIR which was filed with P.S. Kapurthala City, since a chargesheet concededly has been filed in the FIR filed by EOW.

11.1 Having said so, counsel for respondent no.4 cannot but state that a remedy under Section 17 of the Act is available to agitate its objections to taking over of possession by the petitioner bank.

12. To be noted, the learned CMM vide order dated 5.11.2014 had allowed the petitioner bank to take possession of the following properties:-

> "1. Flat No. C-6/06, Plot no. 5, Sector-12, Dwarka, New Delhi, in the name of the Mr. Muraleedharan Pillai.
>
> 2. Flat No.311, Golden Height Apartment Pocket-8 Sector-12, Dwarka, New Delhi in the name of Col. Narendra Singh.
>
> 3. Flat No. A-503, Crescent Apartment Sector-18, Dwarka, New Delhi, in the name of S.S. Ahlawat."

13. Given this background, the writ petition is disposed of with the following directions:-

13.1 Respondents no.4 and 5 who are the guarantors will file their petitions with the concerned DRT under Section 17 of the Act. The needful will be done by the said respondents within three weeks from today.

13.2 The protection against taking possession of the immovable properties which belong to respondent nos.4 and 5 will continue to operate till such time the concerned DRT disposes of the petition, if any, filed by respondents no.4 and 5.

13.3 It is, however, made clear that in case respondents no.4 and 5 do not file their respective petitions with the concerned DRT in the time frame given above, the interim protection against possession of their properties will automatically dissolve.

14. Needless to say, parties will be free to advance their contentions on the merits of the matter which will be considered by the DRT in accordance with law. Since, this matter has been hanging fire for quite some time, the DRT is requested to dispose of the petitions, if filed by respondents no.4 and 5 within eight weeks of the same being instituted.

RAJIV SHAKDHER, J

FEBRUARY 07, 2018
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