

\$~44

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

+ **W.P.(C) 9266/2018, CM No. 35799/2018**

NARESH JAIN

..... Petitioner

Through: Mr. Rajeeve Mehra, Sr. Adv. with
Mr. Amit Dhall, Adv.

versus

CHOLAMANDALAM INVESTMENT FINANCE CO. LTD.

..... Respondent

Through: Mr. Sanjeev Bhandari, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

05.09.2018

CM No. 35799/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 9266/2018

1. This petition has been filed by the petitioner challenging the order dated July 25, 2018 whereby the Debt Recovery Tribunal (for short 'Tribunal') has dismissed the SA filed by the petitioner by holding that the SA is premature as the possession of the property has still not been taken by the secured creditor.

2. The brief facts are, the respondent No.1 sanctioned a loan of Rs.3.04

Crores to the petitioner, which was payable in equated monthly instalments of Rs.3,95,603/- with interest @ 13.5 % per annum payable in 180 months. On January 09, 2018 the respondent issued a demand notice under Section 13(2) of the SARFAESI Act. The objections to the notice sent by the petitioner herein on February 26, 2018 were rejected by the respondent Company vide letter dated March 16, 2018. On July 06, 2018, respondent through Court Receiver appointed by the learned CMM, Delhi initiated the measures under Section 13(4) of the SARFAESI Act for obtaining physical possession of the properties i.e one residential property and one small business shop. The petitioner filed a Securitization Application under Section 17(1) of the SARFAESI Act before the DRT-I, Delhi seeking one prayer that the respondent to sell the residential property for the satisfaction of the dues in terms of the notice of demand under Section 13(2) of the Securitisation Act dated January 09, 2018 and till then no steps be taken against the shop of the petitioner.

3. On July 25, 2018, the DRT-I, Delhi dismissed the SA of the petitioner on the ground that the SA is premature as the possession of the property has still not been taken by the secured creditor. On July 25, 2018, the respondent took the physical possession of both the properties i.e the secured assets.

4. It is the submission of Mr. Rajeeve Mehra, learned Sr. Counsel appearing for the petitioner that the DRT is normally passing similar orders as was passed in the impugned order, despite the position of law being clear, that it is not necessary to take physical possession of the property before the filing of SA under Section 17 of the Act. He relied upon 37 judgments of the Supreme Court and various High Courts / DRT in support of his

contention. In fact, Mr. Sanjeev Bhandari, learned counsel appearing for the respondent has concurred with the submission made by Mr. Rajeeve Mehra.

5. As it is an admitted position that the possession of the property has since been taken over by the respondent, the ground, on which the DRT has dismissed the SA filed by the petitioner being pre-mature is unsustainable. Without going into the issue raised by Mr. Mehra, we are of the view that the present petition needs to be allowed. The order dated July 25, 2018 is set aside. Liberty is granted to the petitioner to revive the SA 255/2018 by filing application before the Tribunal, which shall decide the application in accordance with law.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 05, 2018/ak/aky/jg