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

\+ **<u>W.P.(C) 9904/2018</u>**

M/S PEZZERIA GARMENTS ..... Petitioner

Through: Mr Rahul Kumar and Mr R. Aditya, Advocates.

versus

CORPORATION BANK ..... Respondent

Through: Mr A. Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% **19.09.2018**

<u>CM No. 38597/2018</u>

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 9904/2018 and CM No. 38598/2018</u>

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.09.2018 (hereafter 'the impugned orer') passed by the learned CMM, Karkardooma Courts, Delhi under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter 'the SARFAESI Act'). There is no dispute that the petitioner had availed of financial assistance from the respondent bank and, therefore, the respondent bank is entitled to recover its dues alongwith interest.

4. It is the petitioner's case that the petitioner had mortgaged only the first and the second floor of the property described as 744-A, out of Khasra No. 67 & 68 at Village Jafrabad in abadi of Gali no. 29 of Jafrabad Illaqa,

Shahdara, New Delhi-110053. It is stated that the ground floor of the property in question was not mortgaged to the respondent bank.

5. The petitioner states that the loan documents also clearly reflect that security interest in respect of only two floors of the said property was created in favour of the respondent bank. However, since there was a singular title document for the said property, the petitioner had deposited the title deed of the entire property with the respondent bank.

6. The learned counsel appearing for the respondent (Corporation Bank) disputes the above claim. According to the respondent bank, the petitioner had mortgaged the entire property.

7. In addition to the above, the petitioner has also made various other allegations against the respondent bank including fabrication of certain documents. It is not apposite to examine the said controversy in this petition. This Court is of the opinion that no interference with the impugned order is called for, as the impugned order has been passed under Section 14 of the SARFASEI Act and the petitioner would have to avail of the statutory remedies as provided under the SARFAESI Act.

8. At this stage, the learned counsel appearing for the petitioner states that the reserve price of the property in question has been fixed at ₹54,00,000/-. He further drew the attention of this Court to the reply filed on behalf of the respondent bank before the Debt Recovery Tribunal, Delhi wherein the respondent bank had unequivocally affirmed that if a sum of ₹60,00,000/- is paid by the petitioner, the respondent bank shall immediately release the property in question. The relevant extract of the said pleading is

set out below:-

> "5 (XIII). The contents of para 5 (XIII) of the application are denied as stated. It is submitted that if the SA applicant pays a sum of Rs. 60.00 Lacs immediately, the bank may consider its request to release the said property."

9. The learned counsel appearing for the petitioner states that the petitioner is ready and willing to pay a sum of ₹60,00,000/- to the respondent bank for release of the mortgaged property. He states that a sum of ₹10,00,000/- will be paid before 25.09.2018 and the balance amount would be paid within a period of two months thereafter.

10. This Court is also informed that the auction of the property is fixed on 25.09.2018.

11. In view of the above, it is directed that if the petitioner pays a sum of ₹10,00,000/- to the respondent bank before 25.09.2018, the respondent bank shall not take any steps for auctioning of the said property. The implementation of the impugned order is also deferred. If the petitioner fails to pay a sum of ₹10,00,000/- as agreed by him on or before 25.09.2018, the respondent bank shall be at liberty to proceed further with the auction and the Receiver would take the possession of the property in terms of the impugned order.

12. On receipt of the sum of ₹10,00,000/-, the respondent bank shall return the amount collected from the proposed auction bidder(s). It is further clarified that if the petitioner pays the sum of ₹10,00,000/- before 25.09.2018 but fails to pay the balance amount within a period of two

months thereafter, the Receiver would take the possession of the property in question in terms of the impugned order and the respondent bank would be at liberty to re-auction. In such eventuality, the respondent bank would also be entitled to recover all costs incurred by it for re-auction of the property in question.

13. The learned counsel appearing for the respondent bank states that the bank has already incurred expenses of ₹1,25,000/- for taking the possession and for auction of the property in question. The petitioner shall also pay the said expenses in addition to the sum of ₹60,00,000/-

14. On payment of the aforesaid amount of ₹60,00,000/-, the title deed of the property in question would be released to the petitioner. The petitioner is also at liberty to approach the respondent bank for settlement of the balance dues. It is further clarified that all rights of the respondent bank to recover the balance dues are reserved.

15. The petition is disposed of in the above terms. The pending application is also disposed of.

16. Order *dasti* under signature of Court Master.

VIBHU BAKHRU, J

SEPTEMBER 19, 2018
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