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

+ **W.P.(C) 10100/2018**

VIJAY SHARMA AND ORS.

..... Petitioners

Through Mr.Sumit Pargal, Adv. With
Ms.Pratiti Rungta, Adv.

versus

TATA CAPITAL FINANCIAL SERVICES LTD. Respondent

Through Mr.Rajat Katyar, Adv. With
Mr.Mohnish Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.09.2018

CM No. 39372/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 10100/2018

1. Issue notice.
2. The learned counsel appearing for the respondent accepts notice.
3. The petitioners have filed the present petition, *inter alia*, praying as under:-

“(a) Issue a writ of certiorari and / or any other appropriate writ order or direction thereby extending the period of taking over physical possession of the property being Ground floor and 1st floor of property bearing no.C-77, Shivaji Park, New Delhi-110026 admeasuring 277 sq. Yds. by four months thereby directing the respondent not to take physical possession of the property in question for a period of four months from the date of the order so as to enable the petitioners to make arrangements to shift alongwith

their family members comprising of females, children and senior citizen;”

4. The relevant facts necessary to address the present controversy are that one M/s Studio Vista Animation Pvt. Ltd. had availed certain financial assistance from the respondent bank. The repayment of the dues was guaranteed petitioner nos. 1 and 2 (being the Directors of the said company). M/s Studio Vista Animation Pvt. Ltd. defaulted in repayment of the dues to the respondent bank.

5. On 05.02.2018, the respondent issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter ‘the SARFAESI Act’) claiming a sum of ₹2,94,95,386/- as on 30.12.2018.

6. The respondent filed an application under Section 14 of the SARFAESI Act before the Court of Learned CMM, West Delhi, seeking the appointment of a Receiver to take physical possession of the property in question (Ground floor and 1st floor of the property bearing no.C-77, Shivaji Park, Punjabi Bagh, New Delhi-110026 admeasuring 277 sq. Yds.— hereafter ‘the Property’).

7. The said application was accepted by an order dated 18.08.2018 and the Receiver so appointed has issued a possession notice in September, 2018 indicating that he would be taking physical possession of the Property on 27.09.2018.

8. The learned counsel appearing for the petitioners submits that the petitioners would voluntarily handover the physical possession of the

Property to the Receiver; however, they require some time to make alternate arrangements.

9. Petitioner no.1 is 62 years old. Petitioner no.2 is the wife of petitioner no.1. Petitioner no.3 is the mother-in-law of petitioner no.1 and is of an advanced age (82 years old). Further, petitioner nos. 1 and 2 have two children, who are currently students studying in a college/school.

10. Given the mitigating circumstances, the request made by the petitioners is reasonable and this Court finds no reason for that to be opposed. In the aforesaid view, the present petition is allowed and the implementation of the possession notice of September, 2018 issued by the Receiver is directed to be deferred to 05.01.2019. This is subject to the petitioners filing an undertaking by way of an affidavit affirming that they shall handover peaceful vacant possession of the Property to the authorised officer of the respondent on or before 05.01.2019. It is also directed that the petitioners will not induct any other person in the Property. The aforesaid undertaking be filed within a period of one week from today.

11. It is clarified that on the possession of the Property being handed over, the Receiver appointed by Learned CMM, West Delhi, would stand discharged.

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

VIBHU BAKHRU, J

SEPTEMBER 25, 2018/ab