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

\+ W.P.(C) 10685/2018, Cav. 933-934/2018 & CM Nos. 41654-41655/2018

SUSHIL KUMAR JOLLY ..... Petitioner

Through: Mr. Vinod Malhotra and Mr. Nikhil Malhotra, Advs.

versus

CHOLA MANDLAM INVESTMENT AND FINANCE COMPANY LTD. AND ORS ..... Respondents

Through: Mr. Sanjeev Bhandari and Mr. Prateek Kumar, Advs. for R1
Mr. Ashish Aggarwal, Adv. for R2 to R4 and respondent Nos.2 to 4 in person.

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

O R D E R

% **08.10.2018**

Caveat Petitions 933/2018 and 934/2018

Since learned counsel for the caveators appear, Caveats stand discharged.

CM No. 41655/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10685/2018

1. The present petition has been filed by the petitioner challenging the

order dated September 26, 2018 in Miscellaneous Appeal No.125/2017, whereby the DRAT has dismissed the appeal filed by the petitioner seeking interim relief which was denied by the DRT vide its order dated March 03, 2017.

2. The facts as noted from the record are that it is the case of the petitioner that a Plot bearing No.F-1082, C.R. Park, New Delhi was purchased by him in which his father had contributed only a small portion. But whole of the construction of the ground floor and the first floor has been raised by the petitioner exclusively from his hard earned money. It is his case also that the total consideration of the plot was Rs.70,000/-. After getting some contribution from his father the petitioner had paid the earnest money to the tune of Rs.40,000/-, vide bayana receipt dated March 13, 1979, and the title documents were to be executed in the name of the petitioner or his nominee. But on the advice of Panditji, as told by the respondent No.3 mother, the title documents were executed in the name of his mother respondent No.3. It is his case that the brother of the petitioner, respondent No.2 herein, instigated the respondent No.3 and took a so called business loan from the respondent No.1. But not a single penny of the loan amount has been used in the business but has been siphoned into the accounts of the

family of respondent No.2 i.e. his wife, son, daughter, son-in-law etc.

3. On December 08, 2016 a notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short SARFAESI, Act) was served by the respondent No.1. On February 10, 2017 the CMM, Saket appointed a Court receiver for taking possession of the said property. On February 16, 2017 notice was served upon respondent Nos.2 to 6 by the Court receiver for taking possession. It appears that the petitioner has filed Section 17 application before the DRT but the DRT vide its order dated March 03, 2017 had refused to stay the order of the CMM dated February 10, 2017. In appeal before the DRAT, the DRAT vide its order dated March 14, 2017 directed the petitioner to deposit an amount of Rs.3 crores with the Registrar of DRAT. The petitioner filed a writ petition being W.P. (C) 2872/2017 before this Court. On March 31, 2017 condition of pre-depositing Rs.3 crores with the Registrar of DRAT was set aside and status quo was ordered to be maintained regarding possession of the first floor of the property in question for a period of four weeks, and the matter was relegated to the DRAT. On April 18, 2017 notice was issued to respondent Nos. 2 to 5, but status quo order was not extended by the DRAT. On April 25, 2017, the

petitioner again approached this Court by way of W.P. (C) 3510/2017 and status quo order dated March 31, 2017 passed in W.P. (C) 2872/2017 was continued till the interim application for stay filed by the petitioner before the DRAT was heard and decided on merit. The DRAT again directed the petitioner vide its order dated August 17, 2017 to deposit 50% of the dues of the respondent No.1 i.e., an amount of Rs.3.75 crores.

4. On September 11, 2017 the petitioner again approached this Court vide W.P. (C) 8029/2017 whereby the interim order dated March 31, 2017 was continued till the pronouncement of the judgment by this Court. On September 18, 2018 the DRAT heard the arguments and reserved the case for judgment, and pronounced the impugned order / judgment on September 26, 2018 whereby the DRAT has dismissed the application and rejected the Miscellaneous Application for interim relief.

5. During the course of the arguments, it was brought to our notice that the respondent No.3 has filed a suit for mandatory and permanent injunction against the petitioner herein to vacate and handover the physical possession of the first floor of property being No.F-1082, C.R. Park, New Delhi. A copy of the order of Civil Judge, South-East District, Saket Courts, New Delhi dated November 20, 2017 has been placed before us by the learned

counsel for the respondents to contend that the suit has been decreed. We have been informed that an appeal has been filed by the petitioner herein before the Appellate Court. Be that as it may, the issue which falls for consideration is whether the DRAT has rightly rejected the application for interim relief. The reasoning given by the DRAT in the impugned order is the following:

> *"4. In my firm view the appellant has no case for grant of any interim relief. Nor is it even otherwise in public interest to restrain the financial institution from enforcing its rights under SARFAESI Act in order to recover crores of rupees which undisputedly is 'public money'. The appellant has no prima facie case. The title deed in respect of the property in dispute which admittedly stood deposited with respondent No.1 by respondent No.3 to create equitable mortgage is admittedly in the exclusive name of appellant's mother. DRTs are not supposed to resolve family disputes. All that these Tribunals are expected to examine is whether there is any illegality in the measures initiated under SARFAESI Act by a secured creditor or not. Nothing beyond that. In case the DRTs start entering into family disputes then the whole purpose of establishment of DRTs, which was to ensure speedy recovery of public monies, will get defeated. Therefore, I need not deal with various judgments cited by the learned counsel for the appellant which deal with law of benami transactions and partition law as that controversy is not before this Tribunal. The fact is that the respondent No.1 is a secured creditor and it has to enforce its secured interest in its secured asset."*

6. The aforesaid clearly demonstrate that the conclusion arrived at by the

learned DRAT is justified. We reiterate that the dispute of the petitioner is primarily with his family members. There is also no dispute that the property in question is in the name of the respondent No.3 mother, who has also succeeded in seeking a decree against the petitioner herein. The proceedings initiated by the Bank being independent of the *inter se* dispute, no interim order can be passed, that too, in favour of the petitioner, against the Bank.

7. The writ petition is dismissed.

CM No. 41654/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 08, 2018/*aky*