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

\+ W.P.(C) 12037/2018 & CM Nos. 46605/2018, 46648/2018 & 46649/2018

DR PALLAVI YADAV & ANR ..... Petitioners

Through: Mr S. D. Singh, Mr Jitender Singh and Mr Kartik Arora, Advocates.

versus

VIJAY BANK THROUGH ITS MANAGER & ORS ..... Respondents

Through: Mr Kush Sharma, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 15.11.2018

1. The petitioners have filed the present petition, *inter alia,* praying as under:-

> "(a) issue writ of mandamus or any other writ of the similar nature whereby directing the Respondent No.l bank to disclose the calculation of the amount made by them with the proper calculation of the rate of the interest and further reduce the same if it is found to be unreasonable, uncalled for and erroneous calculation has been made and reduced amount after the adjustment of amount already paid, be disclosed for payment.
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> (b) issue writ of mandamus or any other writ of the similar nature whereby directing the Respondent bank to sell the equipments as mentioned in Annexure – 2 and available at E-1, Kalkaji, New Delhi and adjust the amount received from the said sale and /or permit the Petitioners no. 2 herein

to sell the said equipments and then deposit the amount with the bank towards the repayment of the loan for which loan was taken.

(c) issue writ of mandamus or any other writ of the similar nature whereby directing the Respondent bank to recover a sum of Rs. 17 lakhs by encashing the LIC policy of Respondent no. 2

(d) issue writ of mandamus or any other writ of the similar nature whereby directing the Respondent bank to recover Rs. 70 lakhs as a lump sum amount on selling the equipments and return the rest of the money to the Petitioners no. 1 who had paid the loan amount on behalf of the Max Life Care Pvt. Ltd. in the past as stated in the Memo of Understanding dated 5.9.2017

(e) issue writ of mandamus or any other writ of the similar nature whereby directing the Respondent bank to return the documents of the property of Petitioners no. 1 by expunging any remarks over there by declaring there that the said property is free from any encumbrances and bank has no lien over the said property.

(f) issue writ of mandamus or any other writ of the similar nature whereby directing the Respondent bank to make enquiry relating to the resolution dated 21.10.2014 produced by Dr. Nitendra Singh; and

(g) pass such and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

(h) issue writ of mandamus or any other writ of similar nature whereby directing the Respondent no. 1 to make one time settlement with the Petitioners relating to the loan in question in accordance with the rules and regulations and close the account after receiving the settled amount by

> returning of the papers of the property No. 154, Block A, Sector 8 Dwarka to the Petitioner no. 1 and making the said property free from all encumbrances."

2. The petitioners are, essentially, aggrieved by the action initiated by respondent no.1 bank (hereafter 'the Bank') under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for taking over possession of the property bearing no.154, admeasuring 175 sq. meters Block-A, Sector -8, Dwarka, Delhi (hereafter 'the said property') and recovering the amounts due to it.

3. Admittedly, the petitioners have stood as sureties and guaranteed repayment of the financial assistance advanced by the Bank to Max Care Pvt. Ltd. ('the principal borrower'). The petitioners had also mortgaged the said property as a security for due repayment of the amounts owed to the Bank.

4. It is not disputed that the principal borrower has been unable to repay its debts and in the circumstances, the Bank had issued a notice under Section 13(2) of the SARFAESI Act on 01.06.2018 and had called upon the petitioners as well as the principal borrower to repay a sum of ₹1,34,73,074.16/-.

5. It is also not disputed that the said debt, secured by the mortgage of the said property, has not been discharged.

6. A plain reading of the prayers made in this petition indicates that the petitioner seek that directions be issued to the Bank to enforce its security interest in a particular manner; that is, first against certain assets of the

principal borrower before proceeding against the said property. Plainly, the said relief cannot be granted. It is settled that liability of a surety is co-terminus with the principal debtor, and the creditor is at liberty to proceed against the principal debtor or the surety or both.

7. This Court is also unable to accept that any order directing the Bank to enter into a One Time Settlement is either warranted or can be granted. Settlement of dues, is strictly a matter between the Bank and its debtors.

8. The present petition was taken up for hearing on 02.11.2018 and on that date, Mr S. D. Singh, learned counsel for the petitioners had stated that the petitioners would voluntarily deposit a sum of ₹70 lakhs with the Bank within a period of two weeks from that date. The petitioners were bound down to the said statement and on the aforesaid basis, an order was passed restraining the Receiver appointed under Section 14 of the SARFAESI Act from taking any precipitate steps till 16.11.2018.

9. Admittedly, the petitioners have been failed to deposit the aforesaid amount as volunteered on their behalf.

10. Mr Singh, now requests that further time be granted to deposit the aforesaid amounts, as he states that certain mediation proceedings with a third party are pending before the Delhi High Court Mediation and Conciliation Centre and the petitioners would realise certain funds on conclusion of the said proceedings. This request for additional time is stoutly opposed by the learned counsel for the Bank. Plainly, the petitioners do not have any legal right to insist that further time be granted. This Court had passed order permitting the petitioners to deposit the sum of ₹70 lakhs

as according to the petitioners, that was the amount admittedly due to the Bank, and deposit of such amount may have persuaded the Bank to grant some leeway to the petitioners. However, the petitioners cannot insist that further time be granted and in the meanwhile, the Receiver be restrained from taking over possession of the said property. In view of the opposition to such request from the Bank, it would not be apposite to extend the interim order any further.

11. The petitioners have an alternative remedy under the SARFAESI Act and it would not be apposite for this Court to interfere with the proceedings under the said Act in exercise of powers under Article 226 of the Constitution of India.

12. The Supreme Court has, in number of decisions, observed that ordinarily the Court should not entertain writ petitions in respect of proceedings initiated under the SARFAESI Act. In ***United Bank of India v. Satyawati Tondon and Others: (2010) 8 SCC 110***, the Supreme Court had observed as under:-

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto

> themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
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> 55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

13. In the present case, the essential facts are not disputed. It is not disputed that the petitioners are indebted to the Bank. Undisputedly, the petitioners have also failed to pay even the amount admittedly due to the Bank. Apart from the fact that the petitioners have an alternative remedy, this Court is also of the view that no grounds have been made out to interfere with the order of the learned CMM under Section 14 of the Act, appointing a Receiver to take possession of the said property.

14. It is seen that the petitioners have also prayed that details of the calculation of the amount owed to the Bank be communicated to them. The said prayer is not opposed. Accordingly, the Bank is directed to communicate the break up of the amount owed to by the principal borrower, within a period of one week from today.

15. The petition is disposed of in the aforesaid terms leaving it open for the petitioners to avail alternate remedies. All pending applications stand disposed of.

16. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

NOVEMBER 15, 2018
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