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

% *Date of decision: 18th December, 2018*

\+ W.P.(C) 13687/2018 & CM. Nos. 53360/2018 and 53361/2018

PARVESH JAIN ..... Petitioner

Through: Mr. Ajay Jain, Adv.

versus

IDBI BANK LTD & ORS ..... Respondents

Through: Mr. Sidhartha Barua, Adv. with Ms. Adity Gupta, Adv.

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

V. KAMESWAR RAO, J. (ORAL)

CM. No. 53360/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 13687/2018

1. The challenge in this petition is to the order dated December 18, 2017 passed by the DRAT in Misc. Appeal No. 145/2017 whereby the Tribunal has allowed the appeal filed by the IDBI Bank Limited and set aside the following order of the DRT:-

> *"Heard both sides on interim relief. It is submitted that the security applicant is only entitled to 85 sq. yds. out of the property covered under the mortgage.*

The counsel for the security applicant undertakes to pay Rs.10.00 lacs within one week and another 12.50 lacs within one month thereafter. On the other hand the counsel for respondent no.2 submitted that respondent no.2 is in jail and likely to be released within 7 to 10 days. Respondent no. 2 and 3 are directed to pay the entire balance amount as per OTS with subsequent interest accrued thereon. Respondents no. 2 and 3 are directed to file affidavit within one week to honour the OTS with subsequent interest within time. On payment of Rs.10.00 lacs within one week from today and another Rs.12.50 lacs within one month thereafter and on filing affidavit within one week by the respondent no.2 and 3 as well as by the security applicant to pay both the instalments within prescribed time limit, the taking possession of the property in question by the respondent bank is deferred by next one week, in failure to comply the above-said directions by the security applicant and by the respondent nos. 2 and 3, the respondent no.1 bank will be at liberty to take physical possession of the property in question without any further direction of this Tribunal through the same Receiver."

2. The facts as noted from the record are that Mr. Parvesh Jain (petitioner herein), Proprietor of Jain Tex & Fab had taken a loan from the respondent No.1 Bank. Initially, the sanctioned limit was Rs.430 lakhs, which was subsequently increased to Rs.630 lakhs in April, 2009 and further to Rs.10 Crores in May, 2010. Repayment of the loan amounts was secured by way of equitable mortgages of different properties by deposit of their title deeds with the respondent No.1 Bank.

3. It may be necessary to state here that before possession of the mortgaged properties could be taken, under the SARFAESI Act, on December 16/26, 2015, there was a One Time Settlement (OTS) between the Bank and the proprietor of the borrower firm whereby the Bank's Dy. General Manager Rajinder Singh agreed to accept the payment of Rs.775 lakhs only from the borrower as against the total outstanding dues of over 12 Crores rupees, which he owed to the Bank and also to release the Bank's charge over mortgaged properties including 85 yds. of plot in Mukesh Mkt., Gandhi Nagar. The borrower was to clear the entire dues as per the settlement within a period of three months. As the petitioner did not have the money to pay the Bank even as per the OTS, he entered into some understanding with the respondent No.2 namely Manak Chand Maheshwari whereby respondent No.2 agreed to purchase two plots of 85 sq. yards each, both of which were mortgaged with the Bank, and one was owned by Parvesh Jain and the other was owned by his wife namely Ms. Ruchi Jain, respondent no.3 herein. The petitioner wrote a letter dated January 05, 2016 to the Bank to release any one of the said two plots to begin with, as the respondent No.2 was ready with the money. The Bank's Dy. General Manager Mr. Rajinder Singh agreed to that request of the petitioner and

released one of the two plots measuring 85 sq. yards owned by Ms. Ruchi Jian, respondent No.3 and thereafter the same was sold by the petitioner to the respondent No.2 herein in February, 2016 and he has also made part payment towards the satisfaction of the OTS amount. It appears that full amount of money payable to the Bank under the OTS was not paid by the borrower within the period within which it was agreed to be made and Rs.5.50 Crores only were paid to the Bank. The petitioner wanted a clearance from the Bank that he could go ahead to sell other properties as well, as he had some buyer ready to clear the balance OTS amount but the Bank did not agree to that request.

4. Finally, the OTS came to be revoked by the respondent No.1 Bank and steps were again revived to take over physical possession of the secured assets including the plot in question i.e plot No. 1542-A, Gandhi Nagar, which was mortgaged by the petitioner in favour of the Bank. It was, at that stage, the respondent No.2 herein Manak Chand Maheshwari approached the DRT with his SA in which he claimed that since OTS has been entered into between the Bank and the borrower, i.e., the petitioner had represented to him while selling the plot belonging to his wife,

which had been released by the Bank in January, 2016 that he will be clearing the Bank's entire dues, Manak Chand Maheshwari agreed to purchase the other 85 sq. yads plot No. 1542-A also belonging to the petitioner, which was in fact part of the bigger plot No. 172 out of which 85 sq. yards was part and was owned by his wife and accordingly, petitioner sold his plot also to him in February, 2016.

5. It was his case (of respondent no.2) that the respondent No.1 Bank had illegally obtained an order dated December 14, 2016 for possession of the plot No. 1542-A, purchased by him from petitioner, from the Ld. CMM under Section 14 of the SARFAESI Act. The prayer made by the respondent No.1 was for quashing of the order dated December 14, 2016 passed by the Ld. CMM. It was in this background, the aforesaid order was passed by the DRT.

6. The DRAT was of the view that the DRT was not at all justified in granting any interim protection whatsoever in the matter because *prima facie* the relief sought for by Manak Chand Maheshwari in his SA was beyond the scope of Section 17(1) of the SARFAESI Act. The only prayer made in the SA was for quashing of the order passed by the Ld. CMM in the petition under Section

14 of the SARFAESI Act. It held that in view of Section 14(3) of the SARFAESI Act, no act of CMM in pursuance of this Section shall be called in question in any Court or before any other Authority. The DRAT also was of the view, even otherwise the DRT has granted relief to respondent No.2 without even noticing that there was a *prima facie* case in favour of respondent No.2 or balance of convenience was in his favour for granting interim protection. The DRAT found that admittedly the respondent No.2 claims to have purchased the property in question from Parvesh Jain (the petitioner) being fully aware of the fact that the same was mortgaged with the Bank and consequently Parvesh Jain (the petitioner) could not have sold it to anyone. Ignoring this fact, still the DRT granted the interim protection. The DRAT was of the view that the respondent No.2 took a calculated risk in purchasing a mortgaged property only with the hope that the OTS will finally materialize in favour of Parvesh Jain (the petitioner). The DRAT held, at his instance, the legality of the Bank's action in revoking the OTS cannot be gone into, more particularly when borrower himself is avoiding any legal battle to have that decision of the Bank challenged before any forum. The DRAT also took into consideration the fact that the OTS has since been revoked. Further,

the DRT could not have directed the payments to be made by the respondent No.2 Manak Chand Maheshwari, the petitioner and Ruchi Jain being the borrowers and the guarantor as per OTS, more particularly when nobody has challenged the revocation of OTS. Finally, the DRAT set aside the order passed by the DRT.

7. The only submission made by the learned counsel for the petitioner is that the petitioner having entered into OTS, he is ready and willing to discharge his liability under the OTS. He states, that permission needs to be granted for disposal of the mortgaged property.

8. We are unable to agree with the submission made by the learned counsel for the petitioner. At the outset, we may state that the petitioner was not the applicant before the DRT but it was respondent No.2. In fact, the petitioner, who was borrower, had not taken any action. It is a matter of fact that the OTS has been revoked by the Bank and the same has not been challenged. If that be so, there is no question of discharging any liability under the OTS. The petitioner herein has no locus to challenge the order passed by the DRAT when he was not the applicant before the DRT. We also find that the Bank has proceeded against the

petitioner under the SARFAESI Act. We also note, that the CBI has registered a criminal case against the borrower.

9. Taking into account, the totality of the facts and the fact that there is no OTS in place, the revocation of which remained unchallenged by the petitioner herein, and further that the petitioner has no locus to challenge the order passed by the DRAT, we find no infirmity in the order passed by the DRAT. The writ petition is dismissed.

CM. No. 53361/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 18, 2018/*ak*