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

\+ W.P.(C) 13757/2018

M/S AMAN INT EXT. SYSTEM AND ORS ..... Petitioners

Through: Mr Prakash and Mr Nazma Khan, Advocates.

versus

HDFC BANK ..... Respondent

Through: Mr Manish Verma and Mr Abhishek Agarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 19.12.2018

CM No.53741/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 13757/2018 & CM No.53740/2018

2. The petitioners have filed the present petition impugning a notice dated 19.09.2018 issued by the receiver appointed by the concerned Court under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter 'the SARFAESI Act'). Admittedly, the petitioners had availed of financial facilities from the respondent bank (HDFC Bank Ltd.) and have defaulted in repayment of the same. In view of the default, the respondent bank had issued a notice under Section 13(2) of the SARFAESI Act calling upon the petitioners to pay a sum of ₹18,06,405/- along with interest from 05.07.2018 till the date of payment.

3. The petitioners states that the default in repayment of the dues to the respondent was in view of the mitigating circumstances in his family. It is stated that elder brother of the petitioner no.1 had expired and, therefore, he has been unable to pay the instalments within time. The learned counsel appearing for the petitioners submits that the petitioner shall make good the default and to begin with, the petitioners would pay a sum of ₹5 lakhs within a period of one week from today.

4. The learned counsel appearing for the respondent submits that the present petition is not maintainable in view of the alternative remedy available to the petitioner under the SARFAESI Act.

5. Plainly whether the petitioners ought to be given an opportunity to regularise the loan extended by the respondent bank or not is a decision which is required to be taken by the respondent bank and no interference by this Court is warranted. However, given the mitigating circumstances, this Court is of the view that subject to the petitioners depositing a sum of ₹5 lakhs with the respondent bank within a period of one week from today, the proceedings initiated by the respondent bank for recovery of possession of the residential unit be deferred for a period of six weeks from today. It is so directed. This is to enable the petitioners to approach the respondent bank and to persuade the respondent bank for accepting a mutually acceptable repayment schedule.

6. It is clarified that this Court has not expressed any opinion on the merits of the controversy or even the question whether the present petition is maintainable. It would be open for the respondent bank to consider the

petitioner's plea for re-scheduling the repayment of loan as per its own discretion. If the parties are unable to arrive at an acceptable resolution, the receiver so appointed shall proceed with recovery of possession of the mortgaged property as directed.

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

VIBHU BAKHRU, J

DECEMBER 19, 2018
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