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

+W.P.(C) 10898/2019 and C.M. APPL. 45081/2019 (for int. directions)

MANJU OSWAL AND ORS. ..... Petitioners

Through: Mr. Sudhir Makkar, Senior Advocate, Mr. N. Raja Singh, Ms. Manisha Choudhary, Ms. Deepti Bhardwaj and Ms. Saumya Gupta, Advocates.

versus

STATE BANK OF INIDA AND ANR. ..... Respondents

Through: Mr. Sanjiv and Mr. Abhishek, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **16.10.2019**

1. The present petition challenges an order dated 19th July, 2019 passed by the Debt Recovery Tribunal- I ('DRT'), Delhi, whereby the Securitization Application ('SA') 150/2019 filed by the present Petitioner has been dismissed.

2. At the outset, a question was posed to Mr. Sudhir Makkar, learned Senior counsel appearing for the Petitioner, whether the Petitioners should be permitted to bypass the statutory remedy of going before the Debt Recovery Appellate Tribunal ('DRAT') against the impugned order. His response was that the debt as found due by the DRT was in excess of Rs. 180 crores and that it would be virtually impossible for the Petitioners to satisfy the

requirement of a pre-deposit in terms of Section 18 (1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act ('SARFAESI') as amended.

3. Considering that the Petitioners are only substituting a guarantor of the loan, who was the predecessor-in-interest of the Petitioners, they cannot claim any exemption in terms of Section 18 (1) of the SARFAESI Act. Consequently, the Petitioners ought not to be allowed to bypass the statutory remedy as the Act makes no exception in that regard.

4. Nevertheless, the Court has heard the submissions of Mr. Makkar on merits.

5. It requires to be noticed that by the impugned order dated 19th July, 2019, the DRT has quashed the notice dated 22nd May, 2019 issued by the Court Receiver pursuant to proceedings initiated by the Respondent No. 1 Bank in the Court of the Chief Metropolitan Magistrate ('CMM') under Section 14 of the SARFAESI Act Act. This was on account of failure to serve notice under Section 14 of the SARFAESI Act upon the present Petitioners by the Court Receiver that the DRT quashed those proceedings and restored them to the stage of notice to the present Petitioners.

6. On merits, Mr. Makkar's first submission was that after the death of Mr. Ashok Kumar Oswal, who was the guarantor of a loan availed by, M/s FM Hammerle Textiles Ltd., the principal borrower, the present Petitioners as his legal heirs stepped into his shoes after his death and were entitled to be

separately served notices under Section 13 (2) followed by the notice under Section 13 (4) of the SARFAESI Act notwithstanding that such notices were issued to Mr. Ashok Kumar Oswal during his life time. In support of such plea, he places reliance on the decision of the High Court of Madras dated 1st December, 2010 in W.P. No. 27230/2009 (***S. Suhaina Banu and Ors. vs. Indian Bank and Ors.***)

7. The distinguishing fact in the above decision was that the guarantor of the loan died after the issuance to her of notice under Section 13 (2) of the SARFAESI Act and before further proceedings could continue under Section 13 (4) of the SARFAESI Act. It was in that context that the Madras High Court directed that without a fresh notice under Section 13 (2) to the legal heirs of the deceased guarantor the proceedings could not continue. In the present case, those stages were completed well before the death of the predecessor-in-interest of the present Petitioners.

8. Reliance was also sought to be placed by Mr. Makkar on a decision of the High Court of Telangana dated 3rd June, 2019 in W.P. No. 43027/19 (***Andhra Pradesh State Financial Corporation vs. Kotak Mahindra Bank and Ors.***) to urge that in respect of the property in question which stands mortgaged to the Respondent No. 1 Bank i. e. a residential flat No. B-1/20, 2nd Floor, Vasant Vihar, Respondent No. 1 only had the second charge whereas the first charge was in favour of another lender i.e. J. R. Finance Limited.

9. The Court finds that the decision in question which precludes a second

charge holder from invoking Section 13 (9) of the SARFAESI Act is of no relevance as far as the present Petitioners are concerned. Having gone through the documents pointed out by Mr. Makkar, the Court is of the view that this point nowhere advances the case of the Petitioners.

10. Therefore, even on merits, the court finds that no interference is called for with the impugned order. The petition is dismissed. The pending application is also dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 16, 2019
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