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

% *Date of Decision: 30.10.2019*

\+ **W.P.(C) 11461/2019**

M/S FAQIR CHAND DALIP KUMAR & ORS ..... Petitioner
Through Ms. Pratiti Rungta, Adv.

versus

HDFC BANK LIMITED ..... Respondent
Through Mr. Kunal Tandon with Ms. Niti Jain and Mr. Girdhar Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.(ORAL)

CM No.47073/2019

1. Allowed, subject to just exceptions.

W.P.(C) 11461/2019

2. This is a writ petition which, in effect, seeks directions to stay handing over of physical possession of the immovable property described as House No.32, First Floor, Ashok Vihar, Block B-4, Phase-II, Delhi- 110052 (hereafter referred to as "Ashok Vihar Property").

2.1 The prayer made is that time be accorded to the petitioners to vacate the Ashok Vihar property.

3. Ms. Pratiti Rungta, who appears for the petitioners, says that apart from the Ashok Vihar Property, keys of three built up properties pursuant to orders of the Debt Recovery Appellate Tribunal (DRAT) have already been deposited. Besides this, Ms. Rungta says that the petitioners have ceded possession of a vacant parcel of land.

3.1 According to Ms. Rungta, the value of the aforementioned properties is about Rs.23.16 crores.

3.2 Ms. Rungta, for this purpose, draws my attention to the orders of the DRAT, which are appended at page No.163-167 of the paper book.

4. On the other hand, Mr. Kunal Tandon, who appears for the respondent bank, says that the account of the petitioners was declared a Non-Performing Asset (NPA) as far back as on 31.5.2018.

4.1 It is stated that a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter referred to as "SARFAESI Act") was issued on 20.7.2018.

4.2 Learned counsel informs me that the steps under Section 13(4) of SARFAESI Act against the concerned secured assets were taken on 6.11.2018. It is the submission of the learned counsel that as of today, total outstanding qua the petitioners is, approximately, Rs.90 crores.

4.3 It is stated that against this outstanding, the securities available with the respondent bank bear, approximately, a value of Rs.38 crores.

4.4 Learned counsel for the respondent bank states that looking at the deficit, no such direction as sought for by the petitioners, should be issued by the Court. In support of his submission, learned counsel has relied upon the judgment of the Supreme Court in ***United Bank of India vs. Satyawati Tondon and Others*** (2010) 8 SCC 110.

5. A perusal of the record shows that, in effect, the writ petitioner seeks stay of the operation of the order dated 28.8.2019 passed by the learned Chief Metropolitan Magistrate under Section 14 of SARFAESI Act. Via this order, a Receiver has been appointed. The Receiver, I am told, is to take possession of the Ashok Vihar Property tomorrow i.e. 31.10.2019.

6. It is not in dispute that action under Section 13(4) of SARFAESI Act was taken as far back as on 6.11.2018. The petitioners, therefore, to my mind, ought to have made alternate arrangements by now.

7. Ms. Rungta says that the respondent bank has also delayed taking out proceedings under Section 14 of SARFAESI Act. This, by itself, in my view, would not relieve the petitioners from doing what they should have done in their interest at the earliest.

7.1 At this stage, Ms. Rungta says that since the Ashok Vihar Property is owned by petitioner No.4, who is a guarantor, he would be willing to redeem the equitable mortgage created on the said property.

7.2 If any such offer is received from petitioner No.4, the respondent bank will be at liberty to consider the same based on terms it deems fit.

8. However, given the peculiar circumstances presented on behalf of the petitioners with regard to the composition of the family, the Receiver will stand over the date of taking over the possession of the Ashok Vihar Property till 9.11.2019. This, though, will be subject to the petitioners filing an undertaking, in the form of an affidavit, with this Court by 10.30 A.M. tomorrow (i.e. 31.10.2019), which will, *inter alia*, state that they will without any let or hindrance hand over physical possession of the Ashok Vihar Property by noon on 9.11.2019.

9. A copy of the undertaking will be handed over to the Receiver and the counsel for the respondent bank.

10. The captioned petition is disposed of in the aforementioned terms.

11. *Dasti.*

RAJIV SHAKDHER, J

OCTOBER 30, 2019/pmc