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

Date of Decision:- 18.03.2019

\+ W.P.(C) 2744/2019

M/S RUCHI ENTERPRISES AND ORS. ..... Petitioners

Through: Mr.J. Rajesh & Mr.Rohit Puri, Advs.

versus

M/S FULLERTON INDIA CREDIT COMPANY LTD.

..... Respondent

Through: Mr.Sanjeev Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

C.M. No.12676/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 2744/2019

1. The petitioners assails the order dated 06.03.2019 passed by the Debts Recovery Tribunal-I, Delhi in SA No.53/2019 preferred by the petitioners. By the impugned order, the Tribunal has dealt with the application for interim relief moved by the petitioners to seek a restraint against the respondent, from taking physical possession of the residential property bearing No.M-21, 2nd Floor, Lajpat Nagar-II, New Delhi-110024.

2. The background facts are that the petitioners had availed two loan facilities to the tune of Rs.1,80,00,000/- and Rs.24,00,000/- and

secured the said loan by creating mortgage of the aforesaid property. The petitioners defaulted in the payment of the loan and, consequently, the respondent issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). On 14.06.2017, the petitioners preferred a securitisation application under Section 17 of the SARFAESI Act before the Tribunal. While the said application was pending, the parties entered into a Memorandum of Understanding on 17.01.2018. Under the MOU, the petitioners represented that they will, on execution of MOU, make the payment of the outstanding amounts in EMIs of Rs.7,21,836/-, and the other charges and receiver fee amount of Rs.2,92,179/- within six months, and the respondent/lender agreed not to proceed under the SARFAESI Act subject to receiving the aforesaid payment of Rs.7,21,836/- along with the sum of Rs.2,92,179/-, and payment of all future EMIs regularly by the petitioners/borrowers. It was also agreed between the parties that the SA No.53/2019 filed by the petitioners be disposed of in terms of the MOU.

Clause 5 of the MOU provided that:-

> "5. That the parties herein agree that in case of any default in repayment of the amount as agreed. The borrowers shall surrender the peaceful possession of secured asset to the lender and on failure to so the lender may proceed in accordance with law and provisions of SARFAESI Act, 2002."

3. Admittedly, the petitioners once again defaulted and did not make payment of the instalments, as agreed under the MOU. It

appears that the respondent, therefore, sought to proceed further under the SARFAESI Act by approaching the learned CMM for appointment of receiver to take possession of the aforesaid property. It is then the petitioner moved the fresh securitisation application i.e. SA No.53/2019 along with an interim application on which the impugned order was passed by the learned DRT-I on 06.03.2019. The learned DRT had dismissed the application of interim relief on the ground that the said application came to be moved at the last moment, since notice for taking over possession had been issued by the receiver on 11.02.2019 and was received by the petitioners on 18.02.2019. However, the petitioners had moved the SA along with the interim application at the last moment on 05.03.2019.

4. Firstly, we may observe that the petitioners have not availed the statutory remedy available to them under Section 18 of the SARFAESI Act. The only reason given by the petitioners is that to move such an appeal, they would be required to deposit 50% of the outstanding liability. In our view, that is no ground not to approach the DRAT to avail of the statutory remedy available under the Act.

5. Counsel for the respondent has appeared on advance notice. He submits that the petitioners have concealed–both from the DRT as well as from this Court, the notice dated 12.12.2018 issued to the petitioners on account of their failure to adhere to the terms of the MOU. By the said communication the petitioners were informed that since they had not adhered to the terms of the MOU, the same had been rendered null and void. The petitioners had been called upon to make payment of the outstanding amount of Rs.1,84,21,754.03, or to

surrender the possession of the secured assets within seven days of the notice, failing which the respondent would take steps for taking over possession of the secured assets under the SARFAESI Act. A copy of the notice has been handed over by the learned counsel for the respondent along with the postal receipts as well as the tracking report, and the same are taken on record.

6. The submission of the learned counsel for the petitioners is that without issuing a fresh notice under Section 13(2) of the SARFAESI Act, the respondent could not have proceeded to straightaway seek appointment of the receiver to take over possession of the property.

7. We do not find any merit in this submission, as there is nothing to suggest upon a reading of the Act, that after issuance of the notice under Section 13(2) of the Act, merely on account of the fact that a Memorandum of Understanding/Agreement is entered into between the borrowers and the lender, whereunder, the borrowers agree to make payment of the outstanding amount in instalments, or otherwise and, on that account, the lender agrees to suspension of the proceedings under the SARFAESI Act, the lender would be obliged to initiate fresh proceedings under Section 13(2) of the Act in case there is default by the borrowers in repayment of the outstanding amount as per the terms of the MOU/agreement. If this submission were to be accepted, it would be very convenient for borrowers to come up with a promise to pay the outstanding amount and on that ground to seek suspension of the proceedings under the SARFAESI Act, and upon again committing default, to contend that a fresh notice under Section 13(2) of the Act was required to be issued.

8. In support of his aforesaid plea that a fresh notice under Section 13(2) of the Act was required to be issued, counsel for the petitioners has placed reliance on the decision of the learned Single Judge of the Andhra Pradesh High Court in ***Sashi Agro Food (P) Ltd., Visakhapatnam vs. Andhra Bank, SSI Branch, Gajuwaka & Anr.***, (2007) SCC Online AP 908. However, we do not find any such proposition emerging from the said decision. In our view, not only in terms of the MOU, but also in terms of the provisions of the Act, the respondent was entitled to reopen the proceedings under the SARFAESI Act and continue the same from the stage where they were suspended on account of the parties entering into the MOU, once the terms of the MOU were not adhered to by the petitioners/borrowers.

9. For the aforesaid reasons, we dismiss the present petition with costs of Rs.10,000/- to be deposited with the Prime Minister National Relief Fund with four weeks.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

MARCH 18, 2019
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