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

+ W.P.(C) 3497/2019 & C.M. No. 16059/2019

SMT. KAVITA

..... Petitioner

Through: Mr. Deepak K. Tyagi, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. Amit Mahajan, CGSC with Ms.
Mehak Bakshi, Adv.

Ms. Shonak Sharma with Mr. Kumar
Kashyap, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

08.04.2019

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Mr. Shonak Sharma puts in appearance on behalf of M/s Dewan Housing Finance Corporation Ltd., who is the creditor, on whose behest, the proceedings under the SARFAESI Act have been initiated against the petitioner. The other impleaded respondent M/s Cholamandalam MS General Insurance Co. Ltd. is not an affected party. We have heard the learned counsels and proceed to dispose of the present writ petition.

The limited grievance of the petitioner is that proceedings under the SARFAESI Act have been initiated by the respondent M/s Dewan Housing Finance Corporation Ltd. The petitioner moved an application on 27.11.2018 under Section 17 of SARFAESI Act before learned DRT-III, New Delhi. On the said application, notice was issued to the respondent i.e. M/s Dewan Housing Finance Corporation Ltd. and M/s Cholamandalam MS

General Insurance Co. Ltd. returnable on 14.12.2018. On 14.12.2018, the said parties had put their appearance. The proceedings were further adjourned for 09.04.2019 without passing, any orders, inter alia, on the interim application filed by the petitioner to seek stay against dispossession.

In the meantime, M/s Dewan Housing Finance Corporation Ltd. has taken steps to take over the possession of the petitioner's property under Section 14 SARFAESI Act. The receiver has fixed 09.04.2019 as the date for taking over the possession. In view of the aforesaid development, the petitioner again moved an application on 29.03.2019 before the learned DRT seeking interim relief as prayed for in the application already moved by the petitioner. However, the learned Presiding Officer has not passed any orders even on the fresh application and the matter is now coming up on 09.04.2019 both in respect of the Section 17 application of the petitioner as well as in respect of taking of possession by the receiver.

In our view, the DRT should have considered the petitioner's application for stay against dispossession and should have passed orders after hearing the concerned parties one way or another. By not passing any orders on the stay application, the petitioner has been presented with a *fait accompli* on 09.04.2019. The petitioner may be dispossessed even without getting a fair chance of being heard on the stay application.

The Tribunal should have appreciated this fact.

Accordingly, we dispose of the present petition with the direction to the Tribunal to consider the petitioner's application, inter alia, for stay against dispossession when the matter is taken up on 09.04.2019.

Till the said application for stay is considered, the petitioner shall not be dispossessed. We, however, make it clear that we have not gone into the

merits of the petitioner's case and the DRT shall be free to pass orders on merits after hearing the parties.

This order shall merge in the orders that the DRT may pass on the stay application of the petitioner.

The petition stands disposed of in the aforesaid terms.

Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 08, 2019

N.Khanna