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

+ **W.P.(C) 3891/2019, CM No. 17625/2019**

SUDHIR SALUJA & ORS

..... Petitioners

Through: Ms. Counsel (appearance not given)

versus

ICICI BANK LTD.

..... Respondent

Through: Ms. Chetna Bhalla, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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15.04.2019

CM No. 17625/2019 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 3891/2019

1. The present petition has been filed by the petitioners with the following prayers:

“In view of the above it is most respectfully prayed that this Hon’ble Court may most graciously be pleased to:

a) Issue a writ of certiorari and / or any other appropriate writ order or direction thereby allowing the petitioners to deliver peaceful vacant physical possession of First floor and Second floor of property bearing Plot No.3/21, Nehru

Enclave, Kalkaji Extension, New Delhi-19 which is one dwelling unit to the respondent within a period of four months from the date of the order so as to enable the petitioners to make arrangements to shift along with their family members comprising of females, children and senior citizens;

b) Pass such other and further order(s) and grant such other reliefs in favour of the petitioner and against the respondent that this Hon'ble Court deems just and proper in the facts and circumstances of the case and in the interest of justice and equity."

2. It is submitted by the learned counsel for the petitioners that M/s San Computech Pvt. Ltd. of which the petitioner Nos.1 and 2 are the Directors was granted certain financial facilities by the respondent, secured by mortgaging properties of all the petitioners. On November 09, 2018 the notice under Section 13(2) of the SARFAESI Act, 2002 was issued to M/s San Computech Pvt. Ltd. for payment of a sum of Rs.7,30,14,261.36/-. On March 06, 2019, the learned CMM, Saket Court, New Delhi in a Section 14 petition filed by the respondent Bank had appointed receiver to take physical possession of the property in question being first and second floors of Plot No.3/21, Nehru Enclave, Kalkaji Extension, New Delhi. Pursuant to his appointment, the receiver had issued notice dated March 29, 2019 to take

physical possession of the first and second floors of the property being Plot No.3/21, Nehru Enclave, Kalkaji Extension, New Delhi.

3. Learned counsel appearing for the petitioners would submit that the petitioners have no intention to challenge the appointment of receiver before the DRT and have no objection to the receiver taking physical possession of the property in question. Her only submission is that on humanitarian ground, taking of the physical possession of the first and second floor of the property being Plot No.3/21, Nehru Enclave, Kalkaji Extension, New Delhi be deferred by a period of four months. According to her, on expiry of the said period, the petitioners themselves shall hand over the physical possession of the subject property either to the Bank or the receiver.

4. The grounds as pleaded in the writ petition vide para 15 are, that there are 10 members staying in the property along with children, (who are school and college going) and senior citizens and there is no other residential accommodation in the NCR for them to shift to. The petitioners' endeavour is to make alternative arrangement to shift to any tenanted premises within the time period granted by this Court and thereafter handing over the physical possession of the property being first and second floors of Plot No.3/21, Nehru Enclave, Kalkaji Extension, New Delhi.

5. Learned counsel for the petitioners has relied upon the orders passed by a Coordinate Bench of this Court in *W.P.(C) 9653/2018, Savitri Devi & Ors. v. State Bank of India* and also *W.P. (C) 13156/2018, Vinod Kumar Garg & Ors. v. State Bank of India & Anr.*, wherein such writ petitions have been entertained by this Court and the Court has called upon the petitioners therein to submit an undertaking for voluntarily handing over possession of the subject properties once the period granted by Court expires.

6. Even though, Ms. Chetna Bhalla, learned counsel appearing for the respondent objected to the maintainability of the writ petition by relying upon an order passed by a Coordinate Bench of this Court in *W.P. (C) 8516/2015*, she states that the Bank would have no objection if a period of one month is granted to the petitioners for handing over the physical possession to the Bank / receiver.

7. Having heard the learned counsel for the parties and noting the circumstances, the request made by the petitioners appears to be reasonable and this Court finds no reason for that to be opposed. The writ petition is allowed. The implementation of the notice dated March 29, 2019 issued by the receiver is directed to be deferred for a period of two and a half months

from today. This is subject to the petitioners filing undertaking by way of an affidavit to affirm that they shall handover peaceful vacant possession of the property in question being first and second floors of Plot No.3/21, Nehru Enclave, Kalkaji Extension, New Delhi to the authorised officer of the respondent Bank on or before June 30, 2019.

8. It is also directed that the petitioners will neither induct any other person in the said property nor create any third party rights. The aforesaid undertaking shall be filed in this Court within one week from today.

9. It is clarified that on the possession of the property in question, being first and second floors of Plot No.3/21, Nehru Enclave, Kalkaji Extension, New Delhi, being handed over to the authorised officer of the respondent Bank, the receiver appointed by the learned CMM, South East, District, Saket Court, would stand discharged.

A copy of this order be given *dasti* under the Signatures of the Court Mater.

V. KAMESWAR RAO, J

APRIL 15, 2019/aky