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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5595/2019**
ANIRUDH KUMAR AND ANR.

..... Petitioners

Through: Ms. Pratiti Rungta and Mr. Sumit
Pargal, Advs.

versus

PUNJAB AND SINDH BANK

..... Respondent

Through: Mr. Sumeet Batra, Adv. with
Mr.Alok, Sr. Manager for Bank.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **22.05.2019**

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 property being entire second floor with roof rights of property bearing No.11-12A New No.RZ D-2/68, Gali No.3, Mahavir Enclave, New Delhi-45 measuring 100 sqyards 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;

(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 submission of the learned counsel for the petitioners that the present petition is a mercy petition by a person who has mortgaged the property on financial assistance given to M/s BGN Interior and Furnishers. According to her, as the M/s BGN Interior and Furnishers could not able to repay the loan, the respondent issued notice under Section 13(2) of the SARFAESI Act to M/s BGN Interior and Furnishers calling upon to pay an amount of Rs.13,66,503.60/-. The Bank also initiated the SARFAESI proceedings for appointing a receiver. The learned CMM vide order dated April 03, 2019 has appointed the Court receiver to take the physical possession of the property in question. He has issued a notice for taking physical possession of the property on May 24, 2019.

3. According to the learned counsel for the petitioners, the petitioners have no intention to go into the merits or to object taking over the physical possession of the property in question by the respondent Bank. The only

indulgence the petitioners are seeking on humanitarian ground is that taking over physical possession of only residential property that has entire second floor with the rent rights of the property being No.11-12A New No. RZ D-2/68, Gali No.3, Mahavir Enclave, New Delhi-45 measuring 100 sq. yards be deferred for a period of four months or the time period granted / allowed by this Court.

4. She also states that the petitioners shall also withdraw the Securitisation Application filed vide Diary No.120 pending before the DRT-I, Delhi. According to her, the time period is being sought primarily on the ground that there are four members staying in the said property and the petitioner No.1 was falsely arrested because of which the petitioners have faced financial crunch. It is also stated that they have no other residential accommodation in the entire NCR to shift. Thus the petitioners have to make alternative arrangement to shift to any tenanted premises within the time period that would be granted, failing which the entire family comprising college and school going children would be constraint to come on road as their shelter would be taken away.

5. She also states that the petitioners are ready to file an undertaking before this Court. In support of her submission, the learned counsel has

relied upon a judgment of this Court in the case of *Sudhir Saluja & Ors. vs. ICICI Bank Ltd., W.P. (C) 3891/2019*, decided on April 15, 2019.

6. She submits that as per her instructions, between the period 2016-19 an amount of Rs.7,50,000/- has been paid which shows the bona fide on the part of the petitioners to discharge the liability as and when the money was available to them.

7. On the other hand, learned counsel for the respondent Bank vehemently opposes the grant of prayer to the petitioners. According to him, the petitioner No.1 had initially filed the SA 178/2015 before DRT. The DRT had directed the petitioner No.1 to deposit certain amount of money. Unfortunately, the petitioners failed to deposit the said amount. That apart, a further SA was filed by the petitioner No.1 in the year 2016 being SA 73/16 wherein he obtained the order of deposit of an amount. Unfortunately, the same was also not complied with. He submits that a further SA being 101/19 was filed wherein the DRT in paras 5 to 8 has passed the following order on May 06, 2019 and posted the matter on July 18, 2019:

“5. Admittedly earlier on two occasions i.e. on 16.10.2015 in SA 178/2015 and on 17.03.2016 in SA 73/2016; request of the appellant was considered by this

Tribunal and allowed the applicant time to deposit the overdue and also directed to deposit the instalments in time. However, again the applicant committed default in payment of instalments despite directions of this Tribunal. Thus, as rightly submitted by the Ld. Counsel of the respondent bank, the applicant has committed breach of the directions of this Tribunal.

6. *Ld. Counsel for the applicant submits that since there is marriage of daughter of the applicant, therefore, he may be allowed to remain in the property in question. On perusal of the card which is annexed with the SA reveals that the marriage ceremony is to be solemnized at Bihar.*

7. *Fact of this matter reveal that the applicant did not adhere to his commitments thus, in the light of judgment of Hon'ble Supreme Court in the matter of Prestige Lights vs. SBI 2007 (139) Company Cases 169 (SC), the present interim relief is hereby declined.*

S.A.

8. *The respondent bank is hereby directed to file the reply within four weeks thereafter, list this case on 18.07.2019 for completion of pleadings, filing evidence and exhibition of documents.”*

8. He submits that given the conduct of the petitioners, he is not entitled to any compassion by this Court, more so, in view of the judgment passed

by the Supreme Court in the case of ***Prestige Lights Ltd. vs. State Bank of India (2007) 8 SCC 449*** wherein in para 20 the Court has stated as under:

“20. But, there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent-Bank that having obtained interim order and benefit thereunder from this Court, the appellant-Bank has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, it had taken benefit of the order of interim relief and on the other hand, did not comply with it and failed to pay instalments as directed. Neither it raised any grievance against the condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.”

9. He submits that an amount of Rs.15 Lacs due and payable by the petitioners and this Court should dismiss the present writ petition.
10. Having heard the learned counsel for the parties and noting the

submissions made by them, the total amount of money due as of today is approximately of Rs.15 Lacs (according to the counsel for the respondent Bank). It is his submission that despite the orders of Tribunal the petitioner No.1 has not paid the amount, which submission has been denied by the counsel for the petitioners by stating that between the period 2016-19 an amount of Rs.7,50,000/- has been deposited. She also states that the petitioners shall withdraw the SA before the DRT, if extension of time is granted. She would state that the petitioners do not possess any other property in the NCR. The petitioners intend to make arrangement for shifting in a tenanted premises. She also states that the petitioners shall file an undertaking giving possession of the property to the receiver after the expiry of time allowed by this Court.

11. Keeping in view the facts of this case, this Court is of the view that the implementation of notice issued for May 24, 2019 by the receiver for taking possession of the property in question be deferred for a period of two months from today. This is subject to the petitioners filing an undertaking by way of an affidavit to affirm that they shall hand over physical vacant possession of the property in question being No.11-12A New No. RZ D-2/68, Gali No.3, Mahavir Enclave, New Delhi-45 measuring 100 sq. yards to

the authorised officer of the respondent Bank on or before July 21, 2019. 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 incorporate this aspect as well. The undertaking shall be filed in this Court within one week from today. It is clarified that on the possession of the property in question, i.e No.11-12A New No. RZ D-2/68, Gali No.3, Mahavir Enclave, New Delhi-45 measuring 100 sq. yards being handed over to the authorised officer of the respondent Bank, the receiver appointed by the learned CMM, would stand discharged.

12. Insofar as the judgment relied upon by the learned counsel for the respondent is concerned, the said judgment has to be seen in the facts of that case, which are different from the facts of this case as noted above.

13. The writ petition is disposed of.

Dasti under the signatures of the Court Master.

V. KAMESWAR RAO, J

MAY 22, 2019/aky