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

+ **W.P.(C) 6219/2019 & CM. Nos. 26680/2019 and 26681/2019**

PREMLATA SHARMA Petitioner

Through: Ms. Manpreet Kaur, Adv.

versus

PUNJAB AND SIND BANK Respondent

Through: Mr. Kunal, Adv. with Ms. Chitra
Malhotra, Panel counsel .

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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28.05.2019

This petition has been listed vide supplementary list circulated in the post lunch session on a mentioning made before Hon'ble the Chief Justice.

CM. No. 26681/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6219/2019 & CM. No. 26680/2019 (for stay)

This petition has been filed by the petitioner 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 petitioner to deliver peaceful vacant

physical possession of the property bearing no. WZ-96, Gali No. 14, Ram Garh, Ratan Park, New Delhi – 110015 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 petitioner to make arrangements to shift along with her family members comprising of females, children and senior citizen;

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."

Notice, Mr. Kunal, Adv. accepts notice for the respondent. It is the submission of the learned counsel for the petitioner that this writ petition is a mercy petition only seeking indulgence of this Court for grant of four months' time to enable the petitioner hand over the vacant and physical possession of the property being WZ-96, Gali No. 14, Ram Garh, Ratan Park, New Delhi – 110015. According to her eight members are staying in the property in question along with children who are school going and the petitioner and her husband are Sr. Citizens. The petitioner has no other residential accommodation in Delhi NCR to shift. The property is the only property which the petitioner has. The petitioner has to make alternate arrangements to shift to any tenanted premises within the time period that would be granted, failing which the entire family shall come on road as their shelter shall be taken away. She states, the petitioner would not challenge the appointment of the Court Receiver in any forum.

On the other hand, Mr. Kunal, learned counsel appearing for the

respondent on advance notice along with Ms. Chitra Malhotra, Panel Counsel opposes the writ petition on the ground that the account is NPA since the year 2017. He states that the petitioner had not discharged the liability of paying the loan amount since then. It is his submission that the amount of more than Rs. 2 Crores is still due and payable by the petitioner to the Bank. He states, if the possession of the property is taken, the petitioner shall be within her right to take recourse to Section 17 of the SARFAESI Act, 2002 before the Debt Recovery Tribunal. In other words, this petition is not maintainable. He also states, as per the instructions he has from Mr. Parveen, Deputy General Manager of the respondent Bank, a period of one month can be granted to petitioner to hand over the possession of the property.

Having noted the submissions made by the counsel for the parties and noting the fact that in similar circumstances this Court has granted a period of two months to the petitioner therein, I deem it appropriate to direct that the notice issued on May 14, 2019 by Sh. C.P. Sharma, Court Receiver for taking possession of the property in question be deferred for two months from today. This is subject to the petitioner filing an undertaking by way of an affidavit with a copy to the learned counsel for the respondent affirming that she shall hand over the vacant and physical possession of the property in question being WZ-96, Gali No. 14, Ram Garh, Ratan Park, New Delhi – 110015 to the authorized officer of the respondent Bank on or before July 31, 2019. It is also directed that the petitioner 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 aforesaid undertaking shall be filed within a week from today.

It is made clear that on the possession of the property being WZ-96, Gali No. 14, Ram Garh, Ratan Park, New Delhi – 110015 being handed over to the authorized officer of the respondent Bank, the court receiver appointed by the learned CMM would stand discharged.

The petition stands disposed of.

CM. No. 26680/2019

Dismissed as infructuous.

Dasti under the signature of the Court Master.

V. KAMESWAR RAO, J

MAY 28, 2019/jg