

\$~40

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

+ **W.P.(C) 7650/2019 & CM. Nos. 31830/2019 and 31831/2019**

SHAILENDRA KUAMR YADAV

..... Petitioner

Through: Mr. Sudhanshu Batra, Sr. Adv. with
with Mr. Gaurab Bharathi,
Mr. Pavlav, Mr. Deepak Sharma and
Mr. Aditya Mishra, Advs.

versus

BANK OF INDIA AND ANR.

..... Respondents

Through: Ms. Manjula Gandhi and
Mr. Shivanshu Kumar, Advs. with
Mr. Prashant Gautam, Manager (Law)
Mr. Jai Singh Goel (R-2)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

18.07.2019

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

18.07.2019

CM. No. 31831/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 7650/2019 & CM. No. 31830/2019 (for Stay)

1. The present 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 / mandamus and / or any other appropriate writ order or direction thereby restraining the Respondent No. 1 Bank / Receiver from taking the physical possession of Commercial Property Bearing Pvt. No. 103B measuring about 382.42 sq. ft. super area (Part / Portion of Pvt. No. 103 total area measuring 1159 sq. ft.) and as per lease deed total area is 1650 sq. ft. on First Floor without roof rights bearing Municipal No. XIV/2633 AND 2634 built on Plot/Kh. No. 249-250 in Block M, situated at Bank Street, Naiwala Estate, Karol Bagh, New Delhi 110005 and being claimed by Respondent Bank as "Commercial Property Bearing Plot No. 103, measuring about 1159 sq. ft. on First Floor without roof rights bearing Municipal No. XIV/2633 situated at Bank Street, Naiwala Estate, Karol Bagh, New Delhi 110005" and to defer the taking over of the possession for a period of six months so as to enable the petitioner to make arrangements to shift;

b) Stay and defer the operation of the order dated 25.05.2019 passed by the Ld. CMM (Central), Tis Hazari Courts, Delhi for a period of 6 months or for any other period as this Hon'ble Court deems fit in the interest of justice;

c) 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. Notice, Ms. Manjula Gandhi, learned counsel accepts notice for respondent no.1 Bank. Respondent no.2 Jai Singh Goel is also present in person.

3. It is the submission of Mr. Sudhanshu Batra, learned Sr. Counsel appearing for the petitioner that the petitioner is engaged in the business of polishing, finishing and repairing the gold and diamond ornaments and running its business from the premises being 103B measuring 382.42 Sq. Ft. Super area (part / portion of Pvt. No. 103 total area measuring 1159 Sq. Ft.) and as per lease deed total area is 1650 Sq. Ft. on first floor without roof

rights bearing municipal no. XIV/2633 and 2634 build on Plot / Khasra No. 249-250 in Block M, situated at Bank Street, Naiwala Estate, Karol Bagh, New Delhi as a tenant of respondent no.2 Jai Singh Goel at a monthly rent of Rs.10,000/- since April, 2018 and renewed till January 31, 2020. According to Mr. Batra, petitioner after taking the premises on rent and in order to run the business had spent huge amount of money for renovating the premises so as to make it as per business requirements. According to Mr. Batra one M/s Sunar Diamonds Pvt. Ltd. had availed certain credit facilities and the subject property of which Mr. Jai Singh Goel is the owner was mortgaged with the respondent Bank. Since, the borrower, i.e., the M/s Sunar Diamonds Pvt. Ltd. had failed to adhered to the financial discipline and in order to recover the entire outstanding amount, the respondent Bank had initiated measures under the provisions of the SARFAESI Act, 2002. According to Mr. Batra, after issuing notice under Section 13 (2) of the SARFAESI Act, the Bank had filed a petition under Section 14 of the Act before the learned CMM, who vide its order dated May 25, 2019 had appointed a receiver. The receiver has issued a notice dated July 3, 2019 for taking possession of the property being Plot No. 103 total area measuring 1159 Sq. Ft. on first floor without roof rights bearing municipal no. XIV/2633, situated in Bank Street, Naiwala Estate, Karol Bagh, New Delhi. According to Mr. Batra, petitioner is enjoying the tenancy rights without any interference and interruption. It appears that the fact that property is under tenancy has not been brought to the notice of the learned CMM by the respondent Bank nor by the respondent no.2 which resulted in the issuance of order. In any case, it is his submission that the petitioner shall not per se challenge the order of the CMM on merits except stating that the petitioner

is seeking indulgence of this court on humanitarian ground that the taking over of the physical possession of the property details of which are mentioned above, be deferred by six months to enable the petitioner make alternate arrangements. This according to him is relevant as the upcoming months being festival season / wedding season and it is this period when the petitioner can achieve sale targets and save itself from grave irreparable loss. In the end, Mr. Batra states, if the court is not inclined to grant six months' time, at least two months' time be granted to vacate the property so that in the interregnum, petitioner can make alternate arrangements. Mr. Batra in support of his submissions has relied upon the orders of this court in W.P.(C) 9653/2018 and 6219/2019.

4. On the other hand, learned counsel appearing for the respondent Bank at the outset submits that the present petition per se is not maintainable as the petitioner has an alternate remedy under Section 17 of the SARFAESI Act by approaching the concerned DRT challenging the order of the CMM. In any case it is her submission as Mr. Batra stated that she is ready and willing to vacate the property within two months from today, the date of taking over possession of the property by the receiver be extended by a period of two months so that the order of the CMM appointing the receiver remains valid. She also submits that the vacation of the property within two months shall be subject to the petitioner paying the respondent Bank the rent for a period of three months as was being paid by the petitioner to the respondent no.2 / landlord / mortgagor and by filing an undertaking before this court to that effect. She also submits that similar undertaking must also be filed by the respondent no.2 / landlord / mortgagor.

5. Having noted the submissions made by the counsel for the parties and

noting the fact that in similar circumstances, this court had granted period of two months to the petitioners therein, I deem it appropriate to direct that the notice dated July 3, 2019 issued by Mr. Amardeep Singh, receiver for taking possession of the property being Plot No. 103 total area measuring 1159 Sq. Ft. on first floor without roof rights bearing municipal no. XIV/2633, situated in Bank Street, Naiwala Estate, Karol Bagh, New Delhi be deferred by two months, subject to the petitioner and the respondent no.2 / landlord / mortgagor filing an undertaking by way of an affidavit with a copy to the learned counsel for the respondent no.1 Bank affirming therein that they shall hand over the vacant physical possession of the property in question to the authorized officer of the respondent Bank on or before September 19, 2019 and neither of them shall create third party rights nor will induct any other person in the property nor part with the possession of the property in question. The petitioner shall also state in the affidavit that he shall pay to the Bank the rent for three months. The aforesaid undertaking shall be filed in this court within two days from today.

6. Mr. Batra states that the petitioner shall notify the bank about the handing over of the possession of the property in question by way of a communication at least one week before September 19, 2019. The said statement is taken on record.

7. It is made clear that on the possession of the property Plot No. 103 total area measuring 1159 Sq. Ft. on first floor without roof rights bearing municipal no. XIV/2633, situated in Bank Street, Naiwala Estate, Karol Bagh, New Delhi being handed over to the authorized officer of the respondent No.1 Bank, the court receiver appointed by the learned CMM would stand discharged.

The petition stands disposed of.

A copy of this order be given *dasti* under the signatures of the Court Master.

CM. No. 31830/2019 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 18, 2019/jg