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

\+ W.P.(C) 8392/2019 & CM. No. 34685/2019

MOHD. IKRAMUDDIN ..... Petitioner

Through: Mr. Sacchin Puri, Sr. Advocate with Mr. Ravi Chawla, Mr. Ankit, Mr. Navroop Bakshi, Mr. Kamil Khan, Mr. Dhananjay and Mr. Dhan Singh, Advocates

versus

DEWAN HOUSING FINANCE CORPORATION LTD. ..... Respondent

Through:

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

<u>O R D E R</u>

% 05.08.2019

1. This petition has been filed by the petitioner with the following prayers:-

> *a) Issue a Writ of Mandamus or any other any appropriate writ(s), order(s) or direction(s) thereby setting aside the order dated 22.05.2019 passed under U/s 14 of SARFAESI Act, 2002 bearing Case No. 992/2019 titled as "M/s Dewan Housing Finance Corporation Ltd Vs. Mohd. Ikramuddin and Anr." by the Honble CMM, Karkardoom Courts, and restrain the respondent from taking over possession of secured asset bearing House No. 167, Block C- 11, Yamuna Vihar, Delhi.*
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> *b) Issue a Writ of Mandamus or any other any appropriate writ(s), order(s) or direction(s) thereby*

directing the respondent to supply the up to date statement of account to petitioner and also to regularize the account of petitioner as per the directions of this Hon'ble Court, and

c) Issue a Writ of Mandamus or any other any appropriate writ(s), order(s) or direction(s) thereby directing the Respondent and Court Receiver to stop them from taking the possession of the mortgaged/secured assets on 05.08.2019.

d) Pass any other order(s) which this Hon'ble Court deems fit and proper keeping in view the facts and circumstances of the case, in the interest of justice.

2. The petitioner had earlier approached this Court by way of writ petition being W.P.(C) 10633/2017, which petition was dismissed by this Court on October 31, 2018. Paras 2 to 6 of the said order read as under:-

> *"2. On 26.07.2018 notices were issued and a detailed order was passed by the Court taking note of the conduct of the petitioner, his act of non-complying with the order dated 29.11.2017 and the applicant present in person informed the Court that the applicant shall make a deposit of Rs. 15,00,000/- on 26.07.2018 itself by demand draft or through cheques. Further a sum of Rs.44,00,000/- wouldbe paid in two equal instalments on or before 29.08.2018 and 27.09.2018 respectively and thereafter he gave certain undertaking. For the sake of convenience the order passed and the mandate contained in para 4, 5 and 6 of the order dated 26.07.2018 is reproduced herein under:-*
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> > *"4. Counsel for the applicant has stated on instruction from the applicant, who is present in person in court, that the applicant is making payment of Rs. 15,00,000/- today by demand*

drafts and two cheques. Further amount of Rs. 44,00,000/- would be paid in two equal instalments, on or before 29th August, 2018 and 27th September, 2018, respectively.

5. The applicant states and undertakes that in case any cheque bounces or instalments are not paid by 29th August, 2018 and 27th September, 2018, he would himself handover possession of the mortgaged property bearing House No. 167, Block C-11, Yamuna Vihar, Delhi-53 to the receiver and would not object to the receiver taking possession, without initiation of fresh proceedings and order of the Court. Mortgaged property could be then auctioned and he would not object. Applicant would not part with possession, given on lease or license or alienate the property till the next date.

6. Applicant also states that he would deposit Rs.50,000/- in the Prime Minister's Relief Fund as costs for his lapses and defaults. The said deposit would be made within 15 days from today. "

3. On the aforesaid conditions certain protection was granted to the petitioner. Thereafter when the matter came up for hearing on 30.08.2018, it was found that the petitioner had not complied with the order passed for deposit of Rs.44,00,000/- in two instalments. The directions passed on 26.07.2018 were not complied with and in view to give one more opportunity to the petitioner, the order was modified to the extent that the petitioner was to pay a sum of Rs.8,00,000/- on 30.08.2018 and remaining amount of Rs.36,00,000/- was to be paid by the petitioner in two instalments or in one go on or before 31.10.2018.

4. When the matter is taken up today and we find that petitioner has not complied with the order passed on 30.08.2018. The instalment as prayed for has not been paid and nothing has been done to comply with the earlier orders passed by this Court. It is a case where constantly right from day one when the case was taken up for hearing on 29.11.2017 directions were being issued to the petitioner for deposit of the amount and constantly on every occasion as is detailed hereinabove, the petitioner has defaulted and has not complied with the directions issued by this Court. When the petitioner was directed to pay the sum of Rs.8,00,000/- on 30.08.2018 and thereafter to deposit the remaining Rs.36,00,000/- on or before 31.10.2018 i.e. today this order has not been complied with, the amount has not been deposited and the petitioner and his counsel submit that they be granted some more time to deposit the amount.

5. Learned counsel for respondent bank raises an objection with regard to maintainability of the petition and points out that against the order passed by the Debts Recovery Tribunal, the petitioner has a statutory remedy of filing an appeal before the DRT under the SARFAESI Act and in view of the law laid down by the Supreme Court in the case of ***Authorized Officer, State Bank of Travancore and Another v. Mathew K.C****, (2018)3 SCC 85 and subsequent judgments rendered by the Supreme Court on the same line, this petition should now be dismissed not only on account of the default on the part of the petitioner but also on account of existence of statutory remedy as laid down by the Supreme Court in the case of* ***Mathew K.C.****{supra).*

6. Having considered the submissions made, we find that now indulgence into the matter exercising our extra ordinary jurisdiction under Article 226 of the Constitution is not called for on both the grounds of existence of alternate remedy and the deliberate act on *the part of the petitioner in not complying with the directions issued by this Court from time to time as has been detailed hereinabove. Accordingly, we dismiss this petition and grant liberty to the petitioner, if advised, to take recourse to the statutory remedy available in law."*

3. Thereafter, C.M. No. 46528/2018 was filed by the petitioner and the same was considered by the Division Bench on November 22, 2018, wherein the Division Bench has in paras 2 to 4 has held as under:-

"2. By a detailed order passed by us on 31st October, 2018, we have considered various factors and dismissed the writ petition finding the petitioner not to have complied with different directions issued by this Court from time to time. Now again, the petitioner seeks indulgence of this Court on sympathetic consideration and has filed an application for modification/review of our order dated 31st October, 2018. We, on 2nd November, 2018 made indulgence into the matter and directed the petitioner to file an affidavit indicating the manner in which he proposes to pay the dues. The matter was then directed to be listed on 12th November, 2018. On 12th November, 2018, the petitioner did not file the affidavit. We directed him to file the same by the next date of hearing and the matter was directed to be listed on 19th November, 2018. On 19th November, 2018, the matter was adjourned and was listed today.

3. The affidavit in compliance with the order passed by us on 2nd November, 2018 is filed only on 13th November, 2018 meaning thereby that even though the petitioner was directed to file an affidavit before 12th November, 2018, he again committed a default and did not file the affidavit by 12th February, 2018 and filed it only after time was granted to him. A perusal of the affidavit goes to show that the petitioner again wants time to comply with the order and according to the time frame prayed for, he says *he will pay Rs.5 lakhs on 28th November, 2018, Rs.l4 lakhs by 30th December, 2018 and the remaining Rs.20 lakhs by30th January, 2019.*

4. We are informed that the application filed by the petitioner before the DRAT being S.A.312/2014 has been dismissed on 8th May, 2018 and we find that right from 29th November, 2017, the petitioner has been granted indulgence of this Court by granting him various facilities for deposit of the amount and even though a year's time has been granted, he has failed to comply with these orders and now wants further time which in our considered view is not justified. From the conduct and attitude of the applicant/petitioner we find that except for buying time and seeking adjustment from this Court, the petitioner is not serious enough in clearing the dues of the bank and it seems that he is only interested in delaying the process of recovery."

3. It appears that the petitioner had filed SLP before the Supreme Court, the Supreme Court in its initial orders dated January 15, 2019 and February 01, 2019 has passed the following orders:-

January 15, 2019

Heard learned counsel for the Petitioner.

Considering the fact that assurance was given by the Petitioner before the High Court from time to time and the final assurance given on 22.11.2018 has also not been complied, no further indulgence is warranted in this Special Leave Petition.

However, on the repeated request made by the petitioner, we grant him final opportunity to deposit Rs.39 lakhs, as is payable in terms of order dated 22.11.2018, before 01.02.2019, failing which the Special Leave Petition shall stand dismissed for non-prosecution without further reference to the Court. Till 08.02.2019, status quo as of today be maintained in respect of the attached properties

in question. The amount be deposited in this Court within the specified time.
Subject to above, list the matter on 08.02.2019.

February 1, 2019

"Heard learned counsel for the applicant.
Although, we are not inclined to show any further indulgence but since the applicant has produced a cheque for Rupees Ten Lakh drawn in favour of Registrar, Supreme Court of India, we permit him to deposit the same in the Registry during the course of the day. In addition, the applicant shall deposit further amount of Rs.29 Lakh within two weeks from today, failing which the special leave petitioner shall stand dismissed for non-prosecution without further reference to the Court.
Subject to above, list the SLP after two weeks.
I.A. No. 18369 of 2019 is accordingly disposed of."

4. Thereafter, in IA No. 29449/2019 for extension of time, the Supreme Court on February 27, 2019 had passed the following order:-

"This Court has passed conditional self-operating order on 15th January, 2019 whereby time was given to the applicant to deposit Rs. 39,00,000/- (Rupees Thirty Nine Lakhs Only) on or before 1st February, 2019. The applicant has failed to comply with the said direction, as a result of which the Special Leave Petition stands dismissed.
By this application, the applicant seeks further time to deposit the amount. For the reasons mentioned in the application, as a last opportunity, we extend the time till 8th March, 2019 as assurance is given by the applicant through counsel that the amount will be deposited in the Registry of this Court on or before 8th March, 2019. If the entire amount of Rs. 39,00,000/- (Rupees Thirty Nine Lakhs Only) is not deposited on or before 8th March, 2019, the Special Leave petition shall be treated as dismissed for non-prosecution without further reference to the Court.

Subject to above, the SLP is restored and only if the order is complied in time, it may be listed for further hearing on 12th March, 2019."

5. It appears that the further application was filed by the petitioner before the Supreme Court being M.A. No. 1304/2019 which came up for hearing on July 27, 2019, wherein the Supreme Court has stated as under:-

> *"We are not inclined to entertain this Misc. Application. However, it will be open to the applicant to pursue with the respondent-corporation for grant of further time to deposit the balance amount along with interest, if any, as demanded by the respondent.*
> *The Misc. Application is disposed of accordingly."*

6. Today, Mr. Puri, learned senior Counsel appearing for the petitioner states that the petitioner is ready and willing to deposit an amount of Rs.39,00,000/- before this Court, as according to him, the receiver appointed by learned CMM is ready to take the possession of property.

7. Mr. Puri states that statutory right to deposit the amount payable by the petitioner, to get the release of the property shall be applicable till 30 days of the notice issued to the petitioner. He relies upon the judgment in the case of ***Sri. Sai Annadhatha Polymers and another vs. The Canara Bank rep. by its Branch Manager, Madanpalle: 2018 SCC OnLine Hyd 178*** wherein paras 21 and 23 of the judgment which reads as under:-

> *"21. However, the amended provisions of Section 13(8) of the SARFAESI Act bring in a radical change, inasmuch as the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime stands*

drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till completion of the sale or transfer of the secured asset in favour of the auction purchaser. However, it is significant to note that Rule 8(6) of the Rules of 2002 still continues to remain the same and thereunder, the authorized officer of the secured creditor must necessarily serve upon the borrower a notice of thirty days for sale of the immovable secured asset taking recourse to one of the options available under Rule 8(5) thereof.

23. Therefore, even after the amendment of Section 13(8) of the SARFAESI Act, a secured creditor is bound to afford to the borrower a clear thirty day notice period under Rule 8(6) to enable him to exercise his right of redemption. In consequence, a notice under Rule 9(1) of the Rules of 2002 cannot be published prior to expiry of this thirty day period in the new scenario, post-amendment of Section 13(8) of the SARFAESI Act, as such right of redemption would stand terminated immediately upon publication of the sale notice under Rule 9(1) of the Rules of 2002. The judgment of the Supreme Court in CANARA BANK V/s. M.AMARENDER REDDY , which was rendered in the context of the unamended provisions, would therefore have no application to the post-amendment scenario in the light of the change brought about in Section 13(8). To sum up, the post-amendment scenario inevitably requires a clear thirty day notice period being maintained between issuance of the sale notice under Rule 8(6) of the Rules of 2002 and the publication of the sale notice under Rule 9(1) thereof, as the right of redemption available to the borrower in terms of Rule 8(6) of the Rules of 2002, as pointed out in MATHEW VARGHESE2, stands extinguished upon publication of the sale notice under Rule 9(1).”

8. I am not impressed by the submission of Mr. Puri for the simple reason, on the perusal of the orders passed by this Court and the Supreme

Court, time was granted to the petitioner to deposit the amount of Rs.39,00,000/- Unfortunately, despite assurances, the petitioner has failed to deposit the amount. It clearly shows, the plea of deposit of the amount is only a ploy to get time. In fact, after the Supreme Court dismissed the SLP this petition is not maintainable. The plea of Mr. Puri by relying on the Judgment of the Andhra Pradesh High court in ***Sri. Sai Annadhatha Polymers and Anr. (supra)*** that right of redemption shall be available to the petitioner for a period of 30 days from the date of notice is misconceived, more particularly, in the facts, when petitioner could able to get many thirty days for deposit of the amount which he failed.

I am not inclined to exercise my extra ordinary jurisdiction under Article 226 of the Constitution of India, the writ petition is dismissed.

CM. No. 34685/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 05, 2019/*rhc*