

\$~35

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

+ **W.P.(C) 1475/2020 & CM No.5109/2020, 5111/2020**

UMA SINGHAL & ANR

..... Petitioner

Through: Dr. Sarbjit Sharma with Ms. Yamini
Nijhawan, Advs.

versus

INDIABULLS HOUSING FINANCE LTD & ANR..... Respondent

Through: Mr. Sunil Dalal with Ms. Jaskaran
Singh, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **11.02.2020**

1. Issue notice.
2. Mr. Sunil Dalal accepts notice for respondent No.1.
3. Mr. Dalal says that in view of the directions that this Court intends to pass today, he does not wish to file a counter affidavit and will rely on the documents placed on record.
4. To be noted, respondent No.2 is the husband of petitioner No.1 and father of petitioner No.2.
5. It is the case of the petitioner No.1 that there has been disruption in her marital life. It is asserted that way back in 2012, because of ill-treatment and physical abuse, petitioner No.1 filed a complaint against respondent No.2 concerning domestic violence.
6. There is also an assertion that in and about 29.6.2013, respondent No.2 obtained a loan from respondent No.1 based on the security furnished in the

form of an immovable property, which is described as B-52, New Krishna Park, near Dhauli Piao, Vikaspuri, New Delhi-110018 (hereafter referred to as the “subject property”).

7. The record shows that the Petitioner no. 1 and Respondent no. 2 are the co-owners of the subject property. It is claimed by the petitioners that the mortgage qua the subject property was created by forging their signatures. Similar assertion is made by the Petitioners *vis-à-vis* the guarantees executed qua the subject property.

8. The record shows that the petitioner No.1 and respondent No.2 had approached the concerned DRT under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter referred to as “SARFAESI Act”). The application of petitioner No.1 was numbered as S.A. No.268/2017, whereas the application filed by respondent No.2 was numbered as S.A. No.353/2018. Both the applications were disposed of on 28.3.2019 via two separate orders.

8.1 The principal reason for closing these applications was that the loan account was regularized. Insofar as petitioner No.1 was concerned, while disposing of the application, the concerned DRT made, *inter alia*, the following observations:

“...As regards issue of mortgage, the applicant has liberty to raise the said issue before the appropriate Court...”

9. The record shows that petitioner No.1 moved a miscellaneous application in the disposed of S.A. i.e. S.A. No.268/2017. This application is pending consideration by the DRT.

10. As a matter of fact, the order dated 30.8.2019 does show that the DRT is examining the allegation levelled by the petitioners that the mortgage qua

the subject property was created fraudulently.

11. I am informed by the counsel for parties that respondent No.2 had also moved an application in his disposed of S.A. i.e. S.A. No.353/2018.

12. Furthermore, counsel for the parties informed me that the applications moved by petitioner No.1 and respondent No.2 have been converted into fresh SAs.

13. Mr. Sunil Dalal, who appears for respondent No.1 says that in the newly numbered SA of respondent No.2, an application has been moved by the said respondent, which is coming up for hearing today.

13.1 It is, therefore, Mr. Dalal's contention that all the issues concerning the allegation levelled by petitioners that the mortgage was created fraudulently can be decided by the DRT and that the petitioners should move the DRT for the said purpose.

14. Dr. Sarbjit Sharma, who appears for the petitioners, submits that he would require a short accommodation if this course is to be followed by the Petitioners.

14.1 Given the weak financial position of the petitioners, Mr. Dalal says a window of one week could be accorded to the petitioners.

15. Mr. Dalal informs me that the Receiver appointed by the learned ACMM is to take the possession of the subject property tomorrow i.e. 12.2.2020.

16. Given these circumstances, the captioned petition is disposed of with liberty to the petitioners to approach the concerned DRT within two days from today.

17. Respondent No.1 will have the Receiver stand over the proceedings

for taking over the possession of the subject property by one week.

18. In case the petitioners do not approach the concerned DRT in the next two days, the interim protection granted by this Court will stand dissolved automatically.

19. The concerned DRT is requested to take up the application, if any moved by the petitioners in the pending SA, tomorrow. In case such an application is moved, the DRT will pass an appropriate order after hearing the concerned parties.

20. Needless to add, I have not examined the merits of the matter since DRT is seized of the core issue i.e. as to whether or not mortgage was created qua the subject property fraudulently.

21. Mr. Dalal says that respondent No.1 has also moved an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. *Inter alia*, the assertion made is that the DRT does not have the jurisdiction to deal with the issue of fraud. I am sure that the DRT will take up this aspect of the matter as well while dealing with the Petitioners application

22. Resultantly, pending applications shall stand closed.

23. *Dasti* under the signatures of the Court Master.

RAJIV SHAKDHER, J

FEBRUARY 11, 2020/pmc