10.12.2021
SL No.6
Court No.8
(gc/sg)

FMAT 638 of 2021
with
CAN 4 of 2021

HDFC Bank Limited
Vs.
M/s. Linkwise Tieup Pvt. Ltd. & Anr.

(Via Video Conference)

Mr. Siddhartha Banerjee,
Ms. Soni Ojha,
….for Appellant/Petitioner.
Mr. Dhiraj Trivedi,
Mr. Pankaj Ladia,
Mr. Bikash Singh,
…for the Respondent No.1.

Re: CAN 4 of 2021

This application has been filed by the HDFC Bank Limited for modification of the order dated 17th November, 2021 passed by a Coordinate Bench arising out of an order passed by the learned Trial Judge on 29th September, 2021 in Money Suit No.57 of 2021 wherein the learned Trial Court had directed the plaintiff/respondent to maintain status quo over Schedule “A” and Schedule “B” suit properties with regard to the nature, character and possession till the next date of hearing of the injunction application. The present appellant is not a party to the said proceeding. However, the said order operates against the interest of the bank, i.e., the appellant as it clearly interferes with the right to deal with the said property as it is the secured asset of the bank which is the subject-matter before the Trial Court in the

Money Suit. There is no dispute that the appellant is having a security interest over the property in question and in law, the appellant is entitled to enforce all the rights available under the SARFAESI Act as well as the RDDB Act.

Mr. Dhiraj Trivedi, learned Counsel appearing on behalf of the respondent No.1/plaintiff fairly concedes that in the Money Suit, the appellant is having a claim of Rs.32 lakhs approximately as on 31st December, 2020.

Mr. Siddhartha Banerjee, learned Counsel appearing on behalf of the applicant submits that a prospective purchaser has approached the applicant to purchase the said property at a sum of Rs.17 Crores approximately and till the issue is decided by the learned Trial Judge or by any other appropriate forum, the bank would set apart a sum of Rs.32 lakhs subject to the result of the suit or any other proceeding that may be initiated by the parties.

The Court cannot disregard the fact that it involves huge public money and the claim against the borrower is over Rs.19 Crores. As rightly observed by the Coordinate Bench, the appellant has priority of its charge as envisaged under Section 26E of the SARFAESI Act, 2002. The modification of the aforesaid order is necessitated by reason of the fact that even if the bank is allowed to enforce all its rights under the RDDB Act and SARFAESI Act, the order of status quo might create a complication with regard to the borrower transferring the asset in favour of the prospective purchaser and simultaneously the purchaser acquiring any title in the property. The borrower seems to have taken the umbrella of the status quo order, which if not clarified would make, the order passed by the Coordinate Bench, nugatory and/or otiose. However, at the same time, we should also protect the interest of the respondent No.1/plaintiff with regard to its claim in the pending suit.

Although Mr. Trivedi would urge that for the purpose of selling the said property, appropriate proceedings could have been initiated under the SARFAESI Act but we are not unmindful of the fact that the DRT are not regularly functioning and further delay would cause grave prejudice to both the parties. Moreover, having regard to the nature of the order passed by the Coordinate Bench, we are of the opinion that this modification as proposed by us would benefit both the parties and, in fact, the essence of the order dated 17th November, 2021 is in that regard only and we carry forward the spirit of the said order to do justice to both the parties.

Accordingly, the order dated 17th November, 2021 is modified to the extent that the property can be sold at a sum of Rs.17 Crores to the prospective purchaser and out of the amount received, a sum of Rs.32 lakhs approximately should be set apart by the HDFC Bank Limited in a separate fixed deposit interest bearing account yielding highest return to the credit of the Money

Suit No.57 of 2021 till the disposal of the suit or until any order passed by any appropriate forum.

It is needless to mention that in conducting the sale, the applicant shall follow all the procedures as envisaged in the SARFAESI Act, as the bank is exercising its rights under the SARFAESI Act took possession of the property and decided to sell the same for realizing all its debt.

Accordingly, the application being CAN 4 of 2021 stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.) **(Soumen Sen, J.)**