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

\+ **Date of Decision: 22.09.2021**

% **W.P.(C.) No. 10660/2021 & C.M. Nos. 32873,32874/2021**

WASEEM RAJA AND ANR. ..... Petitioners

Through: Mr. Prashant Kumar Mittal, Advocate.

versus

DEBT RECOVERY TRIBUNAL-III AND ANR. ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

VIPIN SANGHI, J. (ORAL)

1. We heard the counsel for the petitioners on 22.09.2021 and dismissed the petition with costs of Rs. 50,000/- to be deposited with the DSLSA. Due to paucity of time in Court, the detailed reasons dismissing the petition were directed to follow. The detailed reasons for dismissal of the same are as follows:

2. The present petition has been preferred by the petitioners seeking direction to the respondent No. 1, i.e., Debt Recovery Tribunal – III, New Delhi, to dispose of the S.A. No. 191/2020 titled as "*Waseem Raja & Another versus AU Small Finance Bank Ltd.*" expeditiously; and seeking direction to the respondent No.1 not to allow the respondent No. 2 i.e. AU

Small Finance Bank Ltd. to proceed further, by parting with the possession of the property bearing House No. 776, Second Floor, Sheesh Mahal, Azad Market, Delhi- 110006 which is stated to be mortgaged with respondent No.2, till adjudication of the issue of its being a 'Secured Creditor'. The petitioners have further sought direction to the respondent No. 2 not to issue any title document to any person in respect of property in question, and also not to part with physical possession of the said property on the basis of e-auction dated 27.08.2021, or otherwise.

3. The facts giving rise to filing of the present writ petition in nutshell are as follows:

4. The case of the petitioners is that the petitioners had obtained three loans from M/s AU Financiers India Ltd., amounting to Rs.2,00,000/-, Rs.5,50,000/- and Rs.12,00,000/-. The petitioners claim to have mortgaged the property in question in respect of only one loan amounting to Rs.2,00,000/-, and it is claimed that no mortgage was created for securing the other two loans. The details of the loans availed by the petitioners are as follow:

	Loan Account Number and details	**Disbursed after deductions**	**Repaid**	**Amount Due**
1.	**Loan Account No.** L90010607132413333 **Loan Sanctioned**: Rs. 12 lakhs **Date:** 11.07.2017 **EMI:** Rs. 21,622/-for 120 months	**Deductions:** • **Advance interest** w.e.f. 11.07.2017: Rs. 31,803/- • M/s AU Financiers India Ltd	**27EMIs** till October 2019 amounting to Rs.5,90,632/-	**Until 16.01.2020** Rs. 12,04,207/-

	Amount Received on 04.08.2017 Rs. 11,68,197/- out of Rs.12 Lakhs	paid to M/s HDB to pay-off the loan liability of the petitioner no.1: Rs. 1,17,000/- **Disbursed:** On 05.08.2017 received a Cheque bearing no.340716 dated 11.07.2017 issued by M/s AU Financiers India Ltd for Rs. 10,51,197/-		
2.	**Loan Account No.** L9001060713241503 **Loan Sanctioned**: Rs. 2 lakhs **Date:** 11.07.2017 **EMI:** Rs. 3,604/- for 120 months Executed a Mortgage deed dated 08.08.2017 in respect of property in question with M/s AU Financiers India Ltd.	**Deductions:** Advance interest w.e.f. 11.07.2017 Rs. 7,728/- **Disbursed:** Received Cheque bearing no. 340717 on 17.08.2017 for Rs. 1,92,272/-	**31 EMIs** till February 2020 amounting toRs.1,11,724/-	**Until 16.01.2020** Rs. 2,01,063/-
3.	**Loan Account No.** L9001060817539835 **Top-up Loan Sanctioned**: Rs.	**Deductions:** Interest Rs. 23,603/-	**7 EMIs** till December 2019 amounting to	**Until 16.01.2020** Rs.

	5,50,000/- **Date:** 22.05.2019 **EMI:** Rs. 14,267/- for 60 months	**Disbursed:** Received Cheque on 22.05.2019 for Rs. 5,26,397/-	Rs. 99,869/-	5,83,406/-

5. In view of the default in repaying the loans, the aforesaid three loan accounts of the petitioners were classified as Non-Performing Assets (NPA) on 10.12.2019.

6. The respondent No. 2, i.e. AU Small Finance Bank Ltd. issued a demand notice dated 17.01.2020 under Section 13(2) of the SARFAESI Act, 2002, calling upon the petitioners to pay the outstanding dues till 16.01.2020. The petitioners deposited some amount on 31.01.2020 (i.e. a sum of Rs.28,510/- in the loan account bearing No. L9001060713241333: a sum of Rs. 14,420/- in the loan account No. L9001060713241503; and a sum of Rs.50,070/- in the loan account No. L9001060817539835). The default is attributed to COVID.

7. The Chief Metropolitan Magistrate vide order dated 28.10.2020, allowed the application filed by the respondent No.2 under Section 14 of the SARFAESI Act, 2002 and appointed a Receiver to takeover possession of the secured asset, namely the property in question. Consequently, on 01.12.2020, the Receiver issued possession notice upon the petitioners for taking possession of the property in question on 21.12.2020.

8. The petitioners proceeded to file S.A. No. 191/2020 before the Debts Recovery Tribunal-III, Delhi, challenging the order dated 28.10.2020 passed by the Chief Metropolitan Magistrate. After hearing the parties, the DRT-III

vide order dated 21.12.2020 declined to grant any interim relief to the petitioners in their S.A. and adjourned the matter for 19.05.2021. The DRT-III observed that the petitioners herein had availed loans, and mortgaged their property in favour of M/s AU Financiers India Ltd., and mere change of name of the said financial institution to AU Small Finance Bank Ltd., i.e. respondent No. 2, should not come in the way of respondent No.2 to recover their money from the petitioners.

9. Aggrieved by the order of the DRT-III, the petitioners approached this Court by preferring CM(M) 60 of 2021, challenging the long adjournment beyond the period of 60 days, or maximum statutory period of four months – as provided in Section 17(5) of the SARFAESI Act, 2002. The same was dismissed by this Court vide order dated 25.01.2021, with liberty to the petitioners to approach the DRAT by filing Miscellaneous Appeal under Section 17(6) of the said Act.

10. The petitioners approached the DRAT, Delhi under Section 17 of the SARFAESI Act, 2002 by filing M.A. No. 12 of 2021, thereby seeking direction to the DRT-III, Delhi to dispose of the pending S.A. No. 191 of 2020 within the statutory period – as provided under Section 17(5) of the SARFAESI Act. The notice in the said application was issued on 10.02.2021. Subsequently, on 02.03.2021, the matter was adjourned to 16.08.2021 with liberty to move an application for early hearing – in case of extreme urgency. The petitioners moved an application being I.A. No. 162 of 2021 seeking early hearing of M.A. 12 of 2021, which was adjourned to 22.04.2021.

11. The respondent No. 2 issued notice dated 16.02.2021 for sale of the aforesaid property through e-auction on 24.03.2021, for a reserve price of Rs. 21,00,000/-. The petitioners filed another application being I.A. No. 585 of 2021 before DRT-III seeking stay of the said auction, and also restraining the respondent from taking further action till disposal of S.A. No. 191 of 2020. However, the said application became infructuous, as no bid was received.

12. The respondent No. 2 filed its reply to S.A. No. 191 of 2020 preferred by the petitioners before the DRT-III, Delhi. In its reply, the respondent No.2 stated that the loans were granted to the petitioners, and the petitioners had created mortgage of the said property in favour of the bank. The two loans amounting to Rs. 12 Lakhs and Rs. 2 Lakhs were sanctioned against the loan documents in the favour of bank on 10.07.2017, and were to be repaid alongwith 18% fixed rate of interest. On 22.05.2019, the respondent No. 2 disbursed another top-up loan of Rs. 5,50,000/- which was to be repaid alongwith 19% fixed rate of interest. The Respondent No.2 - while objecting to the contention of the petitioners with respect to deduction of advance interest, placed reliance on statement of accounts.

13. The respondent No.2 again issued auction notice dated 20.07.2021 for sale of the mortgaged property on 27.08.2021, at a reduced reserved price of Rs. 14,00,000/- (earlier the reserved price was Rs. 21,00,000/-).

14. The petitioners again filed application bearing No. 1125 of 2021 seeking stay of the said auction. The respondent No. 2 in its reply stated that the same grounds as raised by the petitioners in the application were earlier

dismissed by the DRT-III vide its order 22.12.2020. Vide a detailed order dated 27.08.2021, the DRT-III, i.e. the respondent No. 1, dismissed the stay application of the petitioners. The DRT-III noted that, admittedly, the loans were availed by the petitioners and a sum of Rs. 22 Lakhs is due. The property in question was duly mortgaged by the petitioners in the favour of the bank. The respondent No.2 has followed due process of law by issuing the demand notice, symbolic possession notice, and other subsequent notices. The petitioners were duly served with the auction notice. The DRT-III - while noting that the petitioners have failed to point out any illegality or irregularity in the sale notice issued by the respondent No.2, dismissed the application of the petitioners seeking interim relief against the respondent No.2 from selling the property in question on 27.08.2021 through auction.

15. The respondent No. 2 proceeded to auction and sell the mortgaged property on 27.08.2021.

16. Being aggrieved by the action of the respondent No.2; and the refusal of the DRT-III to grant interim relief, and ultimately rendering the S.A. infructuous, the petitioners preferred the present petition.

17. The petitioners have filed the present petition on the following grounds:

a) The respondent No., 2 failed to consider the specific grounds taken in the aforementioned S.A. pertaining to challenge to the locus standi of respondent No. 2, not being a secured creditor in respect to property of the petitioner No.1, inasmuch as the cheques of loans were not given by the respondent No. 2 and also the registered mortgage deed was/is executed by the petitioner No. 1 in the favour of M/s. AU Financiers India Ltd., and not in favour of respondent No. 2.

b) The locus standi of the respondent No. 2 as 'Secured Creditor' under the SARFAESI Act regarding alleged recovery of the amount demanded vide notice under Section13(2) of the SARFAESI Act is questioned.

c) The violation of status quo seriously prejudices the petitioners, as the interim relief has been declined and the petitioners have been disposed from their residence, and they had to shift in a rental accommodation.

18. The case of the petitioners is that the notice under Section 13(2) of the Act was issued by the respondent No.2, i.e. AU Small Finance Bank Ltd., and not by M/s. AU Financiers India Ltd. The case of the petitioners is that since the loan facility was granted by M/s. AU Financiers India Ltd., and not by the respondent No.2, the respondent No.2 is not a 'secured creditor' under the provisions of the SARFAESI Act. Therefore, the respondent No.2 does not have the locus standi to initiate the recovery proceedings against the petitioners.

19. The petitioners further state that since the property in question is not registered with CERSAI, therefore, the respondent No.2 is not entitled to exercise its right of enforcement of securities under Chapter III, unless the security interest created in favour of the respondent by the borrower has been registered with the Central Registry.

20. The petitioners submit that respondent No. 2 put the property in question to auction on two occasions with the reserve price of Rs. 21 Lakhs

and Rs. 14 Lakhs. As no bid was received in respect of the first auction, the respondent No. 2 reduced the value of the property in the second auction. The petitioners submit that at the time of sanctioning the loan to the petitioners, the value of the property was Rs. 30 Lakhs (approx). In addition, the petitioners have submitted that the property in question had been mortgaged only for the loan of Rs. 2 Lakhs, and not for the other two loans.

21. It is the admitted position that the petitioners had availed three loans from M/s AU Financers Ltd., which has been renamed as AU Small Finance Bank Ltd., i.e. the respondent No.2 herein. The mere fact that the name of the financial institution has been changed, does not lead to extinguishment of the petitioners' obligations towards respondent No.2. That does not preclude the respondent No. 2 to recover the loan amount from the petitioners by taking over the assets – against which the loan facility was provided to the petitioners, by resort to the provisions of the SARFAESI Act. The property had been duly mortgaged by the petitioners with the respondent No. 2 against the loan availed of by them. The petitioners have not filed any document to show that the intention of the petitioners, when they availed of the other two loans of Rs.12 Lakhs and Rs.5,50,000/-, was not to create a security in favour of Respondent No.2 by mortgage of the aforesaid property. Admittedly, a sum of about Rs. 22 Lakhs is due and payable by the petitioners. The respondent No. 2 is entitled to recover its amount by taking over possession of the secured asset – in case of default by the borrowers. As disclosed in the petition, the property has already been

sold through public auction. Hence, the reliefs claimed by the petitioners have become infructuous.

22. In our view, the petitioners are not only running away from their liability to repay the loans amounts availed of by them, but also adopting dilatory tactics – by knocking the doors of the Courts and the Tribunals, to derail the proceedings, wherein also, no prima facie finding has been returned in their favour till date.

23. We, therefore, do not find any merit in this petition. The petitioners are abusing the process of the Courts. We, therefore, dismiss this petition with costs quantified at Rs.50,000/- to be deposited with the DSLSA within four months.

VIPIN SANGHI, J.

JASMEET SINGH, J.

SEPTEMBER 22, 2021