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

% **Date of decision: 9th November, 2021.**

\+ **<u>CM(M) 986/2021</u>**

SANSAR CHAND SHARMA ..... **Petitioner**

Through: Mr. Apurb Lal, Advocate.

Versus

KOTAK MAHINDRA BANK LTD THROUGH CHIEF MANAGER SH G S PANDEY ..... **Respondent**

Through: Mr. Ravi Gupta, Senior Advocate with Ms. Sanya Lamba & Mr. Sachin Jain, Advocates for Bank.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]

<u>AMIT BANSAL, J. (Oral)</u>
<u>CM No.39484/2021(for exemption)</u>

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

<u>CM(M) 986/2021 & CM No. 39485/2021(for stay)</u>

3. The present petition under Article 227 of the Constitution of India impugns the order dated 7th October, 2021 passed by the Chief Metropolitan Magistrate (CMM), South District, Saket Courts, New Delhi in CT Case No. 362/2021, whereby the term of the Receiver appointed by the CMM vide

order dated 5th March, 2021 has been extended for a further period of two months.

4. The counsel for the petitioner contends that he is constrained to approach this Court under Article 227 of the Constitution of India on account of non-functioning of the Debts Recovery Tribunals due to unavailability of a Presiding Officer.

5. Brief facts culminating into filing of the present petition are that the respondent granted benefit of a loan/financial facility to M/s Affinity Beauty Salon with the petitioner as one of the guarantors. On 22nd February, 2021, the respondent filed an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in respect of the said loan/financial facility. Vide order dated 5th March, 2021, the CMM appointed a Receiver for acquiring possession of the Ground Floor, First Floor and the Annexe of the immovable property bearing No.25, Block-C, Green Park Extension, New Delhi and directed the Receiver to (i) take possession of the subject property after giving notice of 15 days to the petitioner; and, (ii) file his report within 2 months from the date of the said order. In pursuance of the directions of the CMM, the Receiver issued notice dated 12th April, 2021 for taking physical possession of the property in question, however, both the respondent and the Receiver failed to take possession. On 6th July, 2021, the Receiver again issued a possession notice to the petitioner for taking possession of the subject property on 15th July, 2021, which was challenged by the petitioner in W.P.(C) No.6446/2021. This Court, vide order dated 13th July, 2021, directed the Receiver to defer taking over possession of the

subject property till 22nd July, 2021. Thereafter, the petitioner filed Securitization Application (SA) bearing SA No.186 of 2021 before the Debt Recovery Tribunal-I, Delhi (DRT). Vide order dated 20th July, 2021, the DRT restrained the Receiver from taking possession of the property in question since the Receiver, in the possession notice 6th July, 2021, had only given 9 days' notice to the petitioner instead of the requisite 15 days. Subsequently, the respondent moved an application before the CMM for revalidation of the order dated 5th March, 2021, which was allowed vide the impugned order dated 7th October, 2021 and the Receiver issued possession notice dated 20th October, 2021, informing the petitioner of possession of the subject property to be taken on 13th November, 2021.

6. Counsel for the petitioner submits that there is no power vested with the CMM to extend the time granted to the Receiver. He further contends that after passing of the order dated 5th March, 2021, the CMM has become *functus officio* and he did not have the power to entertain the application for revalidation of the order dated 5th March, 2021 filed on behalf of the respondent. He further relies upon the order dated 20th July, 2021 passed by the Debts Recovery Tribunal-I, Delhi to contend that the earlier notice dated 6th July, 2021 issued by the Court appointed Receiver had been stayed by the DRT.

7. Mr. Ravi Gupta, senior counsel appearing on behalf of the respondent submits that there is no bar in law for the CMM to grant an extension of time to the Receiver for taking possession of the property in question. It is not as if the respondent had sought fresh appointment of a Receiver. The respondent had only sought extension of the time granted to the Receiver

appointed by the CMM vide order dated 5th March, 2021 as the process of taking possession could not be concluded within the time granted initially by the CMM on account of the COVID-19 pandemic. He relies upon the judgment dated 15th March, 2021 of the Coordinate Bench of this Court in CM(M) 210/2021 titled ***Jammu and Kashmir Bank Limited Vs. Trans Asian Industries Exposition Private Limited*** to contend that there are no fetters on the power of the CMM to extend the time granted for taking possession of the property in question or the secured assets.

8. The present petition is being entertained only on account of non-functioning of the Debt Recovery Tribunals in Delhi.

9. I have gone through the order dated 20th July, 2021 passed by the DRT. The relevant portions of the said order are set out below:-

> *"9. On perusal of order dated 05.03.2021 passed by Ld. CMM, it is clearly mentioned that the Receiver shall give notice of 15-days to the secured creditor/guarantor but in this mater, the Court Receiver has issued the notice on 06.07.2021 for taking the physical possession of the property, fixing the date i.e. 15.07.2021 which is not as per the order of Ld. CMM. Therefore, prima facie case/balance of convenience exists in favour of S. applicants.*
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> *10. In the light of above, I am of the considered view that the Court Receiver has issued notice dated 06.07.2021 for taking physical possession of the property-in-question on 15.07.2021, which is not in accordance with the directions of Ld. CMM, given in the order dated 05.03.2021 as Ld. CMM had directed Ld. Court Receiver to give 15-days advance notice but the Receiver has given only 9-days advance notice.* ***In these circumstances, the Court Receiver is hereby restrained from taking the***

physical possession of the property-in-question ***<u>on the basis of notice dated 06.07.2021.</u>*** *Accordingly, issue of interim relief stands disposed off."*

10. It is clear from a reading of the aforesaid paragraphs of the order of the DRT that the Court Receiver failed to give 15 days' notice, as directed by the CMM in its order dated 5th March, 2021. Therefore, the DRT had restrained the Court Receiver from taking physical possession of the property in question on the basis of the notice dated 6th July, 2021. It is clear that there was no stay on the Receiver taking physical possession after issuance of a fresh notice in accordance with the order passed by the CMM.

11. Judgment of this Court in ***Jammu and Kashmir Bank*** (supra) clearly shows that there is no bar for the CMM to extend the time limit granted to the Receiver for taking physical possession of the secured assets. Reference in this regard may be made to paragraphs 2, 10 and 11 of the aforesaid judgment:

"2. The present petition has been filed challenging the impugned order dated 8th February, 2021 passed by the ld. Chief Metropolitan Magistrate, South District, Saket Courts, New Delhi, vide which, the application of the Petitioner Bank, requesting for extension of time for taking over the physical possession of the properties of the Respondent/debtor, has been dismissed.

...

10. This Court has considered the matter. There is no doubt that the time period of 30 days, extendable to 60 days, fixed under section 14 of the SARFAESI Act, are for executing the order of the Chief Metropolitan Magistrate, concerning the taking over of *physical possession of the properties by the Bank. However, if the court receivers did not cooperate with the Bank, in lieu of taking over the possession of the said properties,* ***it cannot be held that the Court would be rendered powerless and the order directing the taking over of physical possession would be set at naught.***

11. In order to secure the asset of the Bank, it is in the interest of justice that the physical possession of the concerned properties, ought to be taken so as to ensure that the asset is not frittered away by the debtor.*"*

12. In the present case, it appears that the physical possession of the property could not be taken in terms of the time limit of two months fixed by the CMM on account of the COVID-19 pandemic and therefore, in the interest of justice, the CMM extended the time limit for taking possession of the subject property for a further period of 2 months. No provisions of law have been pointed out by the counsel for the petitioner in terms of which the CMM could not extend the time period granted for taking physical possession of the property. It has righty been contended on behalf of the respondent that the respondent had only sought extension of the time granted to the Receiver appointed by the CMM and had not sought any fresh appointment of a Receiver. Technicalities cannot come to the aid of the petitioner in frustrating the object behind the SARFAESI Act.

13. There is no infirmity in the impugned order dated 7th October, 2021. Dismissed.

AMIT BANSAL, J

NOVEMBER 9, 2021/ak