$~57

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

% **Date of decision: 24.01.2022**

\+ **W.P.(C) 1389/2022** & CM APPL. 4018/2022

NIRMAL KUMAR MITRA THROUGH: HIS LEGAL HEIRS
..... Petitioner

Through: Mr. G Tushar Rao, Sr. Adv. with Mr. Mayank Sharma, Adv.

versus

TATA CAPITAL FINANCIAL SERVICES LIMITED & ORS.
..... Respondents

Through: Mr. Jayant Mehta, Sr. Adv. with Mr. Dattatray Vyas, Adv.

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

VIPIN SANGHI, J *(ORAL)*

1. Issue notice. Mr. Vyas, learned counsel for the respondent accepts notice.

2. We have heard Mr. Rao, learned senior counsel, who appears on behalf of the petitioner, and Mr. Jayant Mehta, learned senior counsel, who appears on behalf of the respondent no. 1 - Tata Capital Financial Services Limited. We proceed to dispose of the writ petition.

3. The challenge in the present petition is to the order dated 28.10.2021 passed by the DRAT in Misc. Appeal No. 21/2020, arising out of S.A. No. 230/2019 (DRT-I, Delhi).

4. The said miscellaneous appeal had been preferred by the respondent no. 1 - Tata Capital Financial Services Limited to assail the order passed by the DRT in S.A. No. 230/2019 (preferred by the petitioner herein under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as *"SARFAESI"*)).

5. By the said order, the DRT provided protection against dispossession to the petitioner herein from the ground floor of the property in question. We may notice that the petitioner is the owner, and is claimed to be the mortgager, in respect of loans advanced by respondent No. 1 to respondent Nos. 2 to 4. Since, the respondent no. 1 - Tata Capital Financial Services Limited was aggrieved by the protection granted by the DRT in respect of the ground floor against dispossession, the aforesaid miscellaneous appeal was preferred by it.

6. The DRAT passed an order on 05.02.2020 directing the respondent before it, i.e. the petitioner herein, to make a deposit of Rs. 4 crores on the ground that Rs. 9 crores are recoverable from the borrowers. This order was made as an interim measure. It was directed that, in case, the deposit is not made, the appellant would be at liberty to proceed further with the securitisation measures.

7. The petitioner herein was aggrieved by the imposition of the said condition by the DRAT, and preferred W.P. (C) 2017/2020. The said writ petition, though initially was entertained, was dismissed on 02.09.2021 by this Court. The petitioner herein preferred the Special Leave Petition before the Supreme Court vide the SLP (Civil) No. 15289/2021. The Supreme Court did not interfere with the order impugned before it. However, in the

peculiar facts in the case before it, the Supreme Court permitted the petitioner herein to move the DRT for grant of sufficient time of around six months for vacating the premises. The petitioner then preferred the CM(M) 1116/2021 before this Court to seek extension of time for vacation of the premises.

8. On 07.12.2021, the learned Single Judge granted time to the petitioner to vacate and hand over the possession of the property No. G-1233, Chittaranjan Park, Kalkaji, New Delhi-110019 on or before 30.04.2022. An unconditional undertaking was also required to be filed by the petitioner.

9. The DRAT, in the meant time, dealt with the aforesaid Miscellaneous Appeal 21/2020. The DRAT took notice of the fact that the petitioner had not made the deposit of Rs. 4 crores as directed. Curiously, even though the petitioner was not the appellant, the failure to make the said deposit by the petitioner was taken as a ground by the DRAT to dismiss the appeal preferred by the respondent no. 1-Tata Capital Financial Services Limited. Not only that, it also went on to dismiss the aforesaid Securitisation Application of the petitioner, which was then pending before the DRT, on account of disobedience of the direction to make the deposit by the petitioner.

10. We have heard learned senior counsels, and we are of the view that the impugned order dated 28.10.2021 passed by the DRAT was laconic, and the petitioner's Securitisation Application could not have been dismissed by the DRAT on account of non-deposit of Rs. 4 crores by the petitioner. It appears that the DRAT forgot that it was not the petitioner who was the appellant before it. Therefore, an order in the nature of a pre-deposit, for hearing of appeal, could not have been made against the petitioner herein.

Moreover, the petitioner was only the mortgager and not the borrower. Therefore, there was no question of the petitioner herein being required to make a deposit in an appeal in which the petitioner herein was a respondent.

11. The appeal preferred by the respondent herein related to the protection granted to the petitioner herein, qua the ground floor premises. Even while directing the petitioner to make the deposit of Rs. 4 crores, the consequence of non-deposit was only stipulated as permitting the respondent herein to proceed with the securitisation proceedings. As aforesaid, there was no stay of the order passed by the DRT granted in favour of the respondent No.1 herein.

12. In any event, non-deposit of the amount of Rs. 4 crores by the petitioner herein could not have resulted in the dismissal of the petitioner's Securitisation Application. At the highest, even if it were to be assumed that the order dated 05.02.2020 was executable, the respondent could have executed the same. However, we make it clear that the said order requiring the petitioner to make deposit, itself, was unjustified and not called for, since the petitioner herein was only the mortgager, and not the borrower, and it was not petitioner's appeal which was being heard by the DRAT.

13. Resultantly, the petitioner has been denied the right of adjudication of his pleas with regard to the alleged fraud played by the borrowers, and the respondent No. 1 herein, upon him. That aspect has not been examined by any judicial/quasi-judicial forum. That right of seeking adjudication of his pleas could not have been denied to the petitioner, on account of non-deposit of Rs. 4 crores by the petitioner.

14. We, therefore, set aside the impugned order in so far as it seeks to dismiss the petitioner's Securitisation Application. We do not see any

purpose of restoring the appeal preferred by the respondent No. 1 herein, in view of the fact that, in the meantime, the petitioner has already furnished an undertaking to hand over of the possession of the entire property in its possession by 30.04.2022.

15. The submission of learned senior counsel for the respondent is that the petitioner has been avoiding hearing of S.A. No. 230/2019 before the DRT. We are informed that the proceedings are now listed before the DRT on 28.02.2022. We, therefore, direct the petitioner to appear before the DRT on 28.02.2022, and on every date fixed thereafter by the DRT, and not to seek any undue adjournments.

16. In the meantime, it shall be open to the respondent to undertake proceedings under the SARFAESI Act, in respect of the portions already in its occupation.

17. We may observe that even though the protection granted to the petitioner by the DRT was only in respect of the possession of ground floor, it appears that the respondent, on humanitarian considerations, decided not to take possession of the portions in occupation of the petitioner, and to do so in one go, on 30.04.2022, as undertaken by the petitioner. It is pointed out that the undertaking furnished by the petitioner in terms of the order passed by the learned Single Judge in CM(M) 1116/2021 mentions only the ground floor, and not the other portions, presently in occupation of the petitioner. Since, the respondent has not taken over the possession of the other portions, despite it being entitled to do so, on humanitarian considerations, the petitioner should file a clear undertaking that the petitioner shall hand over the actual physical possession of the entire mortgaged property to the respondent (excluding the first floor of which

possession already stands taken) on 30.04.2022.

18. The petitioner will file an affidavit within a week before this Court.

19. We make it clear that we have not examined, and, therefore, not made any observation on the merits of the petitioner's claim with regard to the mortgaged property.

20. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

JASMEET SINGH, J

JANUARY 24, 2022
SS