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

% *Date of Decision: 13.04.2022*

\+ **W.P.(C) 6081/2022**

ABHISHEK KUMAR SINGH AND ORS. ..... Petitioners

Through: Mr Kirti Uppal, Sr Adv. with Mr Siddharth Chopra, Mr Navneet Thakran and Ms Riya Gulati, Advs.

Versus

M/S CHOLAMANDALAM INVESTMENT AND FINANCE CO. LTD. ..... Respondent

Through: Mr Sanjeev Bhandari with Mr Sushant Bali, Advs.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

CM No.18279/2022

1. Allowed, subject to just exceptions.

W.P.(C) 6081/2022 & CM No.18278/2022*[Application filed on behalf of the petitioner seeking interim relief]*

2. This writ petition is directed against the order dated 01.04.2022, passed by the Debt Recovery Appellate Tribunal, Delhi [in short, 'DRAT'].

3. The impugned order being brief, is set forth hereafter:

"This matter has been taken up by me through Video

Conferencing.
Ld. counsel for appellant states that appellant will make a pre-deposit of 25% which is to the tune of Rs.21.25 lakhs by 15.05.2022 and move appropriate application for wavier of the balance 25% pre-deposit.
List the matter on 04.07.2022 for compliance of 25% pre-deposit.
Appellant has already deposited a sum of Rs.4 lacs towards pre-deposit.
The same be kept in a fixed deposit with a nationalized bank."

4. A perusal of the impugned order shows that the counsel for the petitioners i.e., the original appellants, had made a statement before the DRAT that they will make a pre-deposit of 25% amounting to Rs.21.25 lakhs by 15.05.2022, and, thereafter, they would move an appropriate application for wavier of the balance amount payable towards pre-deposit, which in percentage terms is also 25%.

4.1. As is evident from the impugned order, the petitioners/appellants have already deposited Rs.4 lakhs towards pre-deposit.

4.2. Clearly, the DRAT, via the impugned order, has not issued any direction which would tantamount to fixing a date by which 25% of the pre-deposit amount is to be deposited.

4.3. Therefore, the judgment of the coordinate bench of this court, on which Mr Kirti Uppal, learned senior counsel, who appears on behalf of the petitioners/appellants, seeks to place reliance, i.e., judgment rendered in ***Virender Pal Singh vs. Central Bank of India*,** 2019 SCC Online Del 7661, does not apply to the facts obtaining in the instant case.

5. That said, what has complicated matters for the petitioner/appellant is that while the proceedings were going on, we are told, before the DRAT, which had declined interim relief to the petitioners/appellants, the secured asset i.e., the immovable property was sold.

5.1. Mr Sanjeev Bhandari, who appears on behalf of the respondent, says that the subject secured asset has been sold in a public auction for Rs.1,25,50,000/-. Mr Bhandari, however, concedes that the amount due and payable by the petitioners/appellants is, approximately, Rs.88 lakhs.

5.2. Therefore, clearly, even according to the respondent, there is a surplus amount available with it.

6. Mr Uppal says that the petitioners/appellants wish to retrieve their ownership rights in the subject secured asset, and, therefore, an opportunity for that purpose should be granted to the petitioners/appellants by the respondent.

6.1. In all fairness, Mr Bhandari points out that while the respondent can have no objection to the petitioners/appellants being able to redeem the mortgage, the difficulty in the way of the petitioner/appellants would be, if at all, the auction purchaser.

6.2. In this context, Mr Bhandari has drawn our attention to Section 13(8) of the Securitisation and of Financial Assets and Enforcement of Security Interest Act, 2002 [in short, 'SARFAESI Act'].

6.3. Mr Bhandari says that once the notice for sale has been published, this opportunity [that is, concerning redemption of mortgage] in law is lost to the petitioners/appellants.

7. On being queried, Mr Bhandari points out that since the physical possession of the secured asset is still with the petitioners/appellants, the next limb of the same transaction has not been completed as yet i.e., giving physical possession of the subject secured asset to the auction purchaser.

7.1. Mr Bhandari, however, points out that a sale certificate has been executed in favour of the auction purchaser.

8. Since the appeal filed by the petitioners/appellants before the DRAT is pending adjudication, Mr Uppal, on instructions, seeks leave to withdraw the writ petition to approach the DRAT to enable the petitioners/appellants to work out their remedy, as per law.

8.1. Mr Uppal, on instructions, says that the petitioners/appellants will deposit Rs.25 lakhs with the DRAT, by 19.04.2022.

9. Given this position, the writ petition is dismissed as withdrawn, with liberty to the petitioners/appellants to approach the DRAT.

9.1. The petitioners/appellants will present themselves before the DRAT, on 19.04.2022.

9.2. The DRAT is requested to take up the matter on that date i.e., 19.04.2022.

10. In the interregnum i.e., till 19.04.2022, the respondent will maintain status quo as regards the possession of the subject secured asset.

10.1. However, it is made clear that the DRAT will be free to vary, modify and/or vacate the *pro tem* direction issued hereinabove due to the intervening vacation, only to enable the petitioners/appellants to approach the DRAT.

11. Consequently, pending application shall stand closed.

12. Parties will act, based on the digitally signed copy of the judgment passed today.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 13, 2022/pmc

Click here to check corrigendum, if any