



\$~60 & 64 (Appellate)

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

+ CM(M) 723/2022 & CM APPL. 36582/2022, CM APPL. 36583/2022

SHAMSHAD HASSAN Petitioner
Through: Mr.Rahul Kumar and
Mr.Mantosh Kumar, Advocates

versus

CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED Respondent
Through: Mr.Sanjeev Bhandari, ASC
(Crl.) along with Mr.Sushant Bali and
Mr.Kunal Mittal, Advs.

+ CM(M) 844/2022 & CM APPL. 36591/2022

CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED Petitioner
Through: Mr.Sanjeev Bhandari, ASC
(Crl.) along with Mr.Sushant Bali and
Mr.Kunal Mittal, Advs.

versus

SHAMSHAD HASSAN Respondent
Through: Mr.Rahul Kumar and
Mr.Mantosh Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
J U D G M E N T (O R A L)

% **25.08.2022**

CM(M) 723/2022 & CM(M) 844/2022

1. These petitions arise out of NDN 529/2022(SA), preferred by Shamshad Hassan ("Shamshad" hereinafter) before the learned the learned Debt Recovery Tribunal-III ("the learned DRT").



2. NDN 529/2022(SA) was filed by Shamshad under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI Act”), assailing Possession Notice dated 25th June 2022 issued to the respondent under Section 17 (4) of the SARFAESI Act read with Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002.

3. The application also sought an interim order, staying the effect and operation of the aforesaid possession notice dated 25th June 2022, a restraint against the Cholamandalam Investment and Finance Company Limited (CIFCL) from taking over physical possession of the property forming subject matter of the said possession notice, as well as a stay of auction notice dated 18th July 2022, proposing auction of the said property.

4. As the prayer for interim relief, made by Shamshad, in the aforesaid application, was not being taken up for hearing by the learned DRT, Shamshad preferred CM (M) 723/2022 before this Court, seeking a direction to the learned DRT to hear, at an early date, the application of the respondent on the prayer for interim relief contained therein.

5. The learned DRT has directed the prayer for interim relief, urged by Shamshad in his application, to be listed for hearing on 26th August 2022, i.e., tomorrow. As such, the prayer in CM (M) 723/2022 does not survive for consideration.



6. The auction of the property forming subject matter of the application filed by Shamshad before the learned DRT was fixed for hearing today i.e., 25th August 2022.

7. It is directed that, pending orders of the learned DRT on the prayer of the respondent for interim relief, as contained in the application filed by the respondent before the learned DRT, no bids would be opened consequent to the said auction proceedings.

8. CM(M) 723/2022 stands disposed of accordingly.

CM(M) 844/2022

9. On 27th July 2022, this Court had passed an interlocutory order in CM(M) 723/2022. The interim order reads thus:

“1. The grievance of the petitioner, in this petition under Article 227 of the Constitution of India, is that, despite applications for early hearing of his prayer for interim relief having been filed by him and despite the auction in the present case having been scheduled for 25th August, 2022, the applications are not being taken up and no date of hearing of the interim application is being issued by the learned Tribunal.

2. For the time being, this Court directs the learned Tribunal to take up the application filed on 15th July 2022, by the petitioner and constituting Annexure P-5 to the present petition, for hearing on 3rd August 2022 and to take a decision thereon.

3. Mr. Sanjeev Bhandari, learned Counsel for the respondent has made a statement at the Bar that, in DRT-3, Delhi, applications for interim relief are being listed days after they are filed alongwith the concerned appeals and that, even



if a request for early hearing is made, the interim relief application is listed immediately prior to the date of auction, in most cases on the day before the date of auction or the date of taking up physical possession of the concerned asset. This, he submits, results in serious prejudice to the concerned appellants.

4. He has invited my attention to a judgment of the Supreme Court in *UOI V. Debt Recovery Tribunal, Bar Association*¹, para 10.2 of which requires High Courts to, in exercise of the powers vested in them by Article 227 of the Constitution of India, monitor the functioning of Debt Recovery Tribunals and the Debt Recovery Appellate Tribunals and ensure that they function in a smooth, efficient and transparent manner.

5. In view of the grievance expressed by Mr, Bhandari, the Registrar, DRT-3 is directed to place a report before this Court, before the next date of hearing, specifically dealing with the grievance that Mr. Bhandari has expressed. It is made clear that this order should not be treated as any kind of a criticism of the manner in which the DRT-3 is functioning and that the Court merely is calling for a report to ascertain whether the situation could be remedied and applications for interim relief could be taken up in a more expeditious fashion.

6. Re-notify this matter on 23rd August, 2022.

7. Let a copy of this order be forwarded by the Registry by a special messenger to the Registrar, DRT-3 for compliance.”

10. Consequent to the directions contained in the afore-extracted order dated 27th July 2022, NDN 529/2022 (SB) came up for hearing before the learned DRT on 3rd August 2022. It is against the order which was passed by the learned DRT on the said date that CIFSL has approached this Court by way of CM (M) 844/2022.

¹ (2013) 2 SCC 574



11. The order dated 3rd August 2022 may be sub-divided into various parts.

12. The learned DRT has, in the first instance, taken note of the grievance, advanced by Shamshad before this Court in CM (M) 723/2022, that his application for stay was not being taken up by the learned DRT. A reading of the order dated 3rd August 2022 reveals that the DRT has not taken very kindly to this grievance of Shamshad.

13. The learned DRT has attempted to explain, in the impugned order, as to why the application was not listed for hearing. Thereafter, the learned DRT has proceeded to mulct Shamshad with costs of ₹ 50,000/-.

14. Insofar as the observations of the learned DRT, in the order dated 3rd August 2022, regarding the reasons for the prayer of Shamshad for stay not having been listed before the learned DRT, are concerned, I do not propose to return any findings thereon, as the learned DRT has listed the said prayer for stay before it on 26th August 2022, i.e., tomorrow. There is, however, clearly no justification whatsoever, for imposing costs of ₹ 50,000/- on Shamshad.

15. That said, it is necessary to reproduce para 9 of the order dated 3rd August 2022, thus:

“So far as the contention of learned counsel for FI respondent advanced before Hon'ble High Court is concerned about functioning of DRT 3 on early hearing petitions for interim relief and apparently in support of his adversary, i.e. learned counsel for s. applicant herein / plaintiff before Hon'ble High



Court, it is a surprising event for me as on one side, the act of putting mortgaged property on auction before disposal of SA is being done without its entitlement (It is a violation of mandatory provision 17 (4) SARFAESI Act) and on the other side the early hearing for interim relief (stay of auction) in favour of S applicant was solicited before Hon'ble court.”

(Emphasis supplied)

16. To my mind, the observations of the learned DRT, which are specifically directed, in so many words, against the learned Counsel who appeared on behalf of CIFCL before this Court on 27th July 2022, are completely unwarranted. It ill-behoves a Court to cast aspersions on Counsel. To say the least, the learned DRT was not expected to make such observations, especially as this Court did not deem it necessary to make any such observation in its order dated 27th July 2022.

17. I may note, here, that the learned Counsel who appeared for CIFCL before this Court on 27th July 2022 had only attempted to draw the attention of this Court to the effect that the stay applications which were being filed before the learned DRT were being taken up for hearing at a very late stage, at times the day before the auction was to take place (Incidentally, even in the present case, the learned DRT has fixed the stay application of Shamshad for hearing tomorrow i.e. on 26th August 2022, while the auction is to take place today i.e. 25th August 2022). In doing so, the learned Counsel for the CIFCL was merely discharging his duties as an officer of the Court. There is no question whatsoever of the said learned Counsel, who is a Counsel of substantial standing and is held in esteem by this Court, supporting his



adversary in the proceedings. It is unfortunate that the learned DRT has chosen to return such findings which appear to be more out of a misguided sense of pique rather than on an objective assessment of the situation.

18. I say no more on this count.

19. The said observations, as contained in the impugned order, are therefore expunged.

20. Direction for payment of costs stand set aside.

21. Adverting, thereafter, to the case of CIFCL, the learned DRT has observed that, as Section 17(4) of the SARFAESI Act provides for “mandatory automatic stay” on filing of an application under Section 17(1) of before the learned DRT, no interim prayer for stay was required to be made.

22. The learned DRT has also criticised the CIFCL for having “exceeded its jurisdiction” by issuing sale notice dated 18th July 2022, even while the stay application of Shamshad was pending before the learned DRT.

23. Following these observations, the learned DRT has imposed costs of ₹ 1 lakh on CIFCL.

24. The observation of the learned DRT that filing of an application



under Section 17 results *ipso facto* in automatic stay of the proceedings under challenge before the learned DRT, is incorrect.

25. A division Bench of this Court has, in ***Ram Murty Pyare Lal v. Central Bank of India***², specifically dealt with this issue. In so holding, the Division Bench of this Court has approved the view expressed in para 17 of the report of the judgment of a Full Bench of the High Court of Madras in ***Lakshmi Shankar Mills (P) Ltd. v. Authorised Officer, Indian Bank***³, to the effect that, “there will be no automatic stay of filing of an application under Section 17 of the SARFAESI Act and the Tribunal while granting stay of auction can impose a condition relating to deposit”.

26. As such, the observation of the learned DRT, in the order dated 3rd August 2022, to the effect that mere filing of an application under Section 17 of the SARFAESI Act, challenging the action taken under Section 13 thereof, would result automatically in stay of the action, is incorrect.

27. Insofar as the power of the learned DRT to grant stay of the proceedings under challenge before it in the application filed under Section 17 is concerned, there is no specific provision in the SARFAESI Act which clothes the DRT with such power. Nonetheless, it is well settled, from the time of ***ITO v. M.K. Mohd. Kunhi***⁴, that the power to decide an appeal includes within it the

² 174 (2010) DLT 313

³ AIR 08 MAD 181 (FB)

⁴ AIR 1969 SC 430



power to pass all incidental or ancillary orders as may be necessary in order to effectuate the power to decide the appeal itself.

28. Following the said enunciation of the law in *M.K. Mohd. Kunhi*⁴, a Division Bench of this Court in *ITC Ltd. v. UOI*⁵ specifically held that, though there was no power for grant of stay of the order passed by adjudicating authorities, vested in the Customs, Excise and Board Appellate Tribunal (as it then was) by the Customs Act, 1962 or by the Central Excise Act 1944, such power inhered in the power to decide the appeal itself.

29. By analogy, the power to decide the application preferred under Section 17 of the SARFAESI Act would also carry, with it, the power to grant interim or interlocutory reliefs, if necessary, to effectuate the right conferred by the said provision.

30. Specifically in the context of the SARFAESI Act, in para 80 of *Mardia Chemicals Ltd. v. U.O.I*⁶, the Supreme Court holds that the DRT would have the power to pass interlocutory/stay orders, if found necessary to subserve the interests of justice.

31. With the aforesaid observations, both these petitions stand disposed of.

C. HARI SHANKAR, J.

AUGUST 25, 2022

dsn

⁵ ILR 1983 Del 352

⁶ (2004) 4 SCC 311