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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ **W.P.(C) 675/2023 & CM APPL. 2645/2023**

Date of Decision: 19.01.2023

IN THE MATTER OF:

M/S 72 BPM PVT. LTD
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956 AND HAVING ITS
REGISTERED OFFICE :-
6166, SECTOR B, POCKET 8
VASANT KUNJ, NEW DELHI-110070
THROUGH ITS AUTHORISED
REPRESENTATIVE/CONSTITUTED ATTORNEY
MR. SUNIL SAREEN ..... PETITIONER NO. 1

MR. SUNIL SAREEN
SHAREHOLDER OF M/S 72 BPM PVT. LTD.
S/O LT. MR. Y.P. SAREEN
6166, SECTOR B, POCKET 8
VASANT KUNJ, NEW DELHI-11 0070 ..... PETITIONER NO. 2

MR. RAHIL SAREEN
SHAREHOLDER OF M/S 72 BPM PVT. LTD
S/O MR. SUNIL SAREEN
6166, SECTOR B, POCKET 8
VASANT KUNJ, NEW DELHI-110070 ..... PETITIONER NO. 3

MRS ESHA SAREEN
W/O MR. SUNIL SAREEN
6166, SECTOR B, POCKET 8
VASANT KUNJ, NEW DELHI-110070 ..... PETITIONER NO. 4

MR. Y.P. SAREEN
S/O LATE MR. AMAR NATH VERMA
THROUGH HIS LEGAL HEIR
MR. SUNIL SAREEN
6166, SECTOR B, POCKET 8
VASANT KUNJ, NEW DELHI-110070 ..... PETITIONER NO. 5

MRS SANTOSH SAREEIL .
W/O LATE MR. Y.P.SAREEN
6166, SECTOR B, POCKET 8
VASANT KUNJ, NEW DELHI-110070 ..... PETITIONER NO. 6

Through: Mr.Sudipta Basu, Advocate along with petitioners in person.

versus

PUNJAB NATIONAL BANK
THROUGH ITS AGM -LEGAL
MR. SANJAY CHAWLA
NO.7 BHIKAJI CAMA PLACE
AFRICA A VENUE
NEW DELHI-110066 ..... RESPONDENT

Through: Mr.Vipin Jai and Mr.Ujjwal Goel, Advocates for R-1/PNB.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition is directed against order dated 13.12.2022 in Case No. 12647/2022 passed by learned ACMM, Patiala House Courts, New Delhi, whereby, the concerned court directed for appointment of Receiver and to take the physical possession of the mortgaged property and to file compliance report in the office.

2. Learned counsel appearing on behalf of petitioners submits that the impugned order is palpably wrong. The same has been passed without considering the material facts, resulting in grave injustice to the petitioners.

3. Learned counsel appearing on behalf of the petitioners, while

referring notices dated 20.10.2015 and 20.07.2016, states that the respondent-Bank is resorting to adopt malpractices while issuing two different notices, mentioning different amounts. According to him, the One Time Settlement (hereinafter "OTS") was already entered into and once the OTS was entered into and partly acted upon by the petitioners, it was incumbent upon the respondent-Bank to have considered the earlier notice to be *non-est* in the eyes of law. The impugned order dated 13.12.2022 is based upon the earlier notice dated 20.10.2015 which ought not to have been relied upon by the respondent-Bank. He has pointed out various practical difficulties to indicate that the petitioners with *bona fide* intent, had entered into the OTS with all fairness as they wanted to re-pay the loan amount.

4. Learned counsel appearing on behalf of the respondent-Bank vehemently opposed the submissions on advance notice and states that the petitioners in all fairness ought to have brought on record the fact of pendency of Securitisation Application (SA) No. 24/2023, which was filed by the same petitioners before Debt Recovery Tribunal (DRT), Delhi. According to him, the application was already pending on the date when the petitioners approached this court in the instant petition. He has shown the copy of the order dated 18.01.2023, which has been passed by the DRT, wherein, similar arguments were made and the prayer for interim relief has been rejected by a detailed order.

5. When this court confronted the learned counsel appearing on behalf of the petitioners regarding the order passed by the DRT dated 18.01.2023, he explains that the counsel who appeared before the DRT intimated him about the same only yesterday. Since the petitioners were interested to somehow avail remedy under Article 226 of the Constitution to protect the

fundamental rights of the petitioners, inadvertently, the aforesaid fact could not be brought on record as the petition was to be filed yesterday only so that appropriate relief could be availed as soon as possible. According to him, not mentioning of the fact of pendency of the SA before the DRT, would not disentitle the petitioners from availing remedy under Article 226 of the Constitution. According to him, the instant petition stands on a different footing and this court can still entertain the same, notwithstanding the fact that the petitioners have already approached the DRT.

6. I have considered the submissions made by the learned counsel appearing for the parties and perused the record.

7. The order dated 18.01.2023 passed by DRT specifically records that almost similar submissions which have been made before this court by learned counsel appearing on behalf of the petitioners were advanced. The symbolic possession of the mortgaged property has already been taken in the year 2016. The Receiver appointed by the court was directed to take possession of the property situated in Delhi on 19.01.2023. It is an admitted fact that on the date of filing of this petition before this court, the petitioners have already approached the DRT in SA No.24/2023.

8. When the litigant approaches the High Court under Article 226 of the Constitution of India, for 'equitable relief', it is incumbent upon him or her to come with clean hands. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution, over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed

before the court, the Writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter. (See: ***Prestige Lights Ltd. v. State Bank of India*[1]*, K. Jayaram and Others v. Bangalore Development Authority and Others*[2]*, Amit Kumar Shrivastava v. Central Information Commission, New Delhi*[3]*).***

9. The material fact of pendency of the proceedings before the DRT should have been brought on record. The fact that the petitioners have not pleaded anything with respect to the pendency of the SA before the DRT is a serious issue. Even when learned counsel appearing for the petitioners started his arguments, he took this court through various facts of the writ petition without disclosing the said important fact. It is only the respondent-Bank who pointed out this fact. The petitioners somehow try to justify their act for not disclosing the pendency of the SA before the DRT. This court highly deprecates such an approach and attitude.

10. In view of the above, this court is not inclined to entertain the instant petition. The same is dismissed along with pending application, with a cost of Rs.25,000/- to be paid within 60 days from today.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 19, 2023/MJ

[1] (2007) 8 SCC 449
[2] 2021 SCC OnLine SC 1194
[3] 2021 SCC OnLine Del 336