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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 08.11.2023*+ **W.P.(C) 1385/2023 and CM Nos. 5165/2023 & 45235/2023**

DALIP KUMAR SALUJA &amp; ANR. .... Petitioners

Through: Mr Akhil Sachar, Ms Sunanda  
Tulsyan, Ms Kavya Pahwa and  
Mr Shivam, Advocates.

Versus

PIRAMAL CAPITAL AND HOUSING FINANCE  
LIMITED (PCHFL) AND OTHERS .... RespondentsThrough: Mr Sanjeev Sagar, Mr Rishabh  
Malik and Ms Nazia,  
Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The petitioners have filed the present petition impugning an order dated 01.02.2023 (hereafter '**the impugned order**') passed by the learned Debts Recovery Appellate Tribunal, New Delhi (hereafter '**the DRAT**') dismissing the petitioner's appeal (Appeal No.22/2023 captioned *Dalip Kumar Saluja & Anr. v. Piramal Capital and Housing Finance Ltd. & Ors.*) against an order of the learned Debts Recovery Tribunal-II, Delhi (hereafter '**the DRT**') dated 23.01.2023. The learned DRT had rejected the petitioner's application filed under Section 17 of the Securitisation and Reconstruction of Financial



Assets and Enforcement of Securities Interest Act, 2002 (hereafter '**the SARFAESI Act**') in respect of the steps taken by the respondents in respect of a property described as Plot No. M-61, Ground Floor, Village Basai Darapur, Block-M, Kirti Nagar, New Delhi-110015 (hereafter '**the subject property**'). It is stated that the said subject property belonged to one Sh. Satinder Singh Nijhawan (hereafter '**the Borrower**'). He had availed the loan from respondent no.1 against the mortgage of the subject property.

2. It is the petitioner's case that they had acquired the subject property from the Borrower in terms of an Agreement to Sell dated 07.09.2021. In terms of the said Agreement, the entire sale consideration of the property was agreed at ₹1,00,00,000/-. The petitioners claim that they paid a sum of ₹90,00,000/- as part consideration and were required to pay the balance. The petitioners also claim that the possession of the subject property was handed over by the Borrower in performance of the said Agreement to Sell.

3. The petitioners claim that at the material time, the Borrower had shown a No Objection Certificate (NOC) purportedly issued by respondent no.1, evidencing that the loan taken from respondent no.1 was repaid and foreclosed. However, subsequently, it transpired that the said NOC was a fabricated document. According to respondent no.1, the Borrower had not discharged the loan.

4. It is respondent no.1's case that the said loan was sanctioned and disbursed to the Borrower, in terms of the Sanction Letter dated



16.03.2018 and therefore, the security interest in respect of the subject property was created prior to the Agreement to Sell entered into by the Borrower with the petitioners.

5. There is some controversy as to whether the loan disbursed to the Borrower was in terms of the Sanction Letter dated 27.07.2018, as now asserted by respondent no.1 or in terms of the Sanction Letter dated 16.03.2018, as claimed before the learned DRT. However, there is no controversy that respondent no.1 had disbursed the loan to the Borrower against the mortgage of the subject property prior to the Agreement to Sell entered between the Borrower and the petitioners.

6. According to respondent no.1, a substantial amount was outstanding and accordingly, respondent no.1 had issued a notice under Section 13(2) of the SARFAESI Act claiming an amount of ₹1,18,86,903/- as of, 31.03.2023. Since the said loan was not repaid by the Borrowers, respondent no.1 issued a notice under Section 13(4) of the SARFAESI Act claiming possession of the subject property. Aggrieved by the said notice, respondent no.1 also approached the learned Chief Metropolitan Magistrate, District West, Tis Hazari Courts, Delhi for taking steps for taking possession of the subject property. In terms of an order dated 22.12.2022, the learned Chief Metropolitan Magistrate appointed a Receiver to take possession of the subject property. The Receiver issued a notice intending to take possession of the subject property on 02.02.2023 at 12:00 p.m.

7. Aggrieved by the same, the petitioners had approached the



learned DRT by filing an application under Section 17 of the SARFAESI Act. The learned DRT dismissed the said application as not maintainable. The learned DRT held that the petitioners had no title or interest in the property as the Agreement to Sell in terms of which the petitioners were claiming title and interest in the subject property was not registered.

8. Aggrieved by the said order, the petitioners filed an appeal before the learned DRAT. The learned DRAT rejected the said appeal on the ground that the Agreement to Sell did not confer any rights in favour of the petitioners. The learned DRAT also noted that it was admitted that the loan was disbursed by respondent no.1 prior to the date of Agreement to Sell and therefore, the petitioners did not derive any title to the subject property.

9. It is material to note that before the learned DRAT, the petitioners stated that they were ready to pay a sum of ₹20,00,000/- within a period of one day and would pay the balance amount claimed by respondent no.1 within a period of one month, thereafter. However, the learned DRAT did not accede to the request for restraining respondent no.1 from taking possession of the subject property and held that they were not entitled for any order restraining respondent no.1 from taking steps under the SARFAESI Act.

10. The learned counsel appearing for the petitioners has assailed the impugned order, essentially, on the ground that the amount claimed by respondent no1 is not due to the respondents. The



controversy sought to be raised is with regards to a clause in the Sanction Letter, which refers to an insurance policy. The Sanction Letter dated 16.03.2018 mentioned that the premium amounts of the insurance products were included in the sanctioned loan amount. The details of the insurance products included the following two products:

- “1. DHFL Home Shield H L underwritten by Dhfl Pramerica Life Insurance Co. Ltd. The Premium amount is Rs.5,35,216.00/-;
2. GI Residential Property insurance underwritten by DHFL General Insurance Ltd. The Premium amount is Rs.2,62,688.00/-.”

11. The Sanction Letter dated 27.07.2018 issued by respondent no.1 also mentioned a singular loan product as set out below:

- “1. GI Residential Property Insurance underwritten by DHFL General Insurance Ltd. The Premium amount is Rs.75,048.00/-.”

12. The learned counsel for the petitioners submitted that since, the Sanction Letters expressly provide that the insurance premium would be included in the said amounts, respondent no.1 would have definitely taken an insurance policy and therefore, the loan disbursed by it, would be insured and stands discharged on death of the Borrower.

13. The learned counsel for respondent no.1 has countered the aforesaid submission. First of all, he submitted that the Sanction Letter dated 16.03.2018 was not acted upon. The amount sanctioned has not been disbursed and the terms were not given effect to. He



states that respondent no.1 had disbursed the loan in terms of the Sanction Letter dated 27.07.2018. He further submitted that the insurance policy was a general policy in regards to the property and therefore, the default by the Borrower did not give rise to any obligation to a general insurance company to discharge the loan. He further submitted that notwithstanding the above, there was, in fact no policy that was issued in respect of the subject property. Respondent no.6, Pramerica Life Insurance Limited (formerly known as DHFL Pramerica Life Insurance Co. Limited) has also filed an affidavit affirming that there is no insurance policy in respect of the Borrower that was issued. It is affirmed in the said affidavit, that a policy was issued on 16.03.2015, wherein Dewan Housing Finance Limited (DHFL) was the Master Policy Holder, the Life Assured was respondent no.4 and the nominee was respondent no.2. However, the said policy was surrendered and the surrender value of ₹40,359.90/- was paid to respondent no.4 on 26.02.2018. There is some controversy with regards to the said averment, according to respondent no.1, the loan was sanctioned in the year 2018 and therefore, there was no question of any life insurance of respondent no.2.

14. The Borrower and his wife (co-borrower) had committed suicide and there is no dispute that no amount has been paid by any insurance company to respondent no.1.

15. We do not consider it apposite to entertain any further controversy in regards to whether respondent no.1 had purchased any life insurance policy in respect of the Borrower and his wife. This is



because, there is no material on record to indicate that any such policy had been purchased or the terms of such policy. There is an unequivocal statement made by respondent no.1 as well as respondent no.6 that no such policy of which respondent no.1 as a beneficiary directly or indirectly exists. The petitioners' claim that the loan disbursed by respondent no.1 stood discharged from the proceeds of such policy is insubstantial.

16. We find no ground to fault the impugned order, which is premised on the basis that the petitioners do not have any right or title in respect of the subject property since, their claim is premised solely on the basis of an Agreement to Sell and that too, one that was entered after the mortgage in respect of the subject property was created.

17. It is also the petitioners' case that there is a dispute whether the title documents with respect to the subject property are in possession of respondent no.1 or ICICI Bank Limited. He submits that this issue has arisen because ICICI Bank Limited has also issued a notice dated 23.09.2023 under Section 13(4) of the SARFAESI Act for taking possession of the subject property.

18. The learned counsel for the petitioners had earnestly submitted that although the petitioners want to settle with the Borrower, it is not certain as to who are the lenders (respondent no.1 or ICICI Bank Limited) and have the original title deeds.

19. Undeniably, the said notice would raise a question as to which of the lenders have the genuine property documents. This Court is



informed that an appeal in this regard is pending before the learned DRT as well as the learned DRAT. Thus, this issue would require to be considered by the said forums as there appears to be rival claims in respect of the security interest, in respect of the subject property.

20. Be that as it may, the petitioners in any case cannot resist any action by the secured lenders.

21. The present petition is, accordingly, dismissed.

22. We, however, clarify that this would not preclude the petitioners from approaching the concerned lenders for an amicable resolution of the dispute.

23. The petitioners have also deposited ₹20,00,000/- with the Registry of this Court. The Registry is directed to refund the same along with accrued interest to the petitioners.

24. The learned counsel for the respondents fairly states that given the festive season, the respondents would not take any precipitate steps to take over the possession of the subject property, for a period of thirty days from date.

25. The pending applications are also disposed of.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**NOVEMBER 8, 2023/RK**