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

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Date of Decision: 20.07.2023

+ **W.P.(C) 8684/2023 & CM APPL. 32875/2023 & CM APPL. 32876/2023**

NEETU SAINI THROUGH POWER OF ATTORNEY
HOLDER NEERAJ SAINI Petitioner

Through: Mr. Nitin Jain, Adv.

versus

BAJAJ FINANCE LIMITED Respondent
Through: Mr. Rajat Katyal & Mr. Rahul Sambher, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “a) To De-seal the subject property bearing All the part and parcel of nonagricultural property comprised in the bearing B-37, SF NDSE-II, New Delhi-110049, East-Road, West-Service Lane, North- Plot No. B-36, South-Plot no. B-38
- b) To set aside/ quash the impugned order dated 14/11/2022 passed by the Ld. Presiding officer Tribunal Debt Recovery Tribunal-I, Delhi in TSA/266/2022



- c) To set aside/ quash the impugned order dated 12/05/2023 passed by the Ld. Presiding officer, Debt Recovery Tribunal-I, Delhi in TSA/266/2022
- d) To set aside/ quash the impugned order dated 15/02/2023 passed by the Hon'ble DRAT in Misc. Appeal No. 06/2023 arising out of T.S.A. No. 266/2022 (DRT-I, Delhi).
- e) To stay the further actions of the respondent bank and maintain Status Quo against the property bearing All the part and parcel of nonagricultural property comprised in the bearing B-37, SF NDSE-II, New Delhi-110049, East-Road, West-Service Lane, North- Plot no.B-36, South-Plot no. B-38" till the disposal of this writ petition."

2. The petitioner is, essentially, aggrieved by the action taken by the respondent (hereafter '**BFL**') in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**'). The petitioner is the widow of the original borrower who had availed the financial assistance from the respondent company. The petitioner is also a co-borrower. The petitioner has filed this petition through her power of attorney holder.

3. There is no dispute that the original borrowers are indebted to the respondent. There is also no dispute that the property in question bearing the address, B-37, Second Floor, NDSE-II, New Delhi-110049 (hereafter '**the mortgaged property**') was mortgaged to the respondent as security for the financial assistance availed by the petitioner and her deceased husband.



4. Admittedly, on 14.04.2022, BFL had issued a notice under Section 13(2) of the SARFAESI Act, whereby it claimed an amount of ₹2,64,00,988/- as outstanding and payable by the petitioner. The petitioner responded to the said notice by a letter dated 26.05.2022. It is stated that, thereafter, the petitioner executed the power of attorney in favour of Mr. Neeraj Saini, who has filed present petition on behalf of the petitioner. Thereafter, the petitioner filed yet another a reply to the notice under Section 13(2) of the SARFAESI Act on 27.07.2022. BFL responded to this reply as well.

5. Since the outstanding amount, as mentioned in the aforesaid notice dated 14.04.2022, was not discharged, BFL issued a Possession Notice dated 24.08.2022 under Section 13(4) of the SARFAESI Act for enforcement of its security interest in respect of the mortgaged property. Aggrieved by the same, the petitioner preferred an application (TSA/266/2022) under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal (hereafter '**the DRT**'). The petitioner also sought interim relief, *inter alia*, restraining BFL from taking possession of the mortgaged property. However, the learned DRT rejected the petitioner's prayer by an order dated 14.11.2022.

6. Aggrieved by the rejection of her prayer for interim relief, on 19.01.2023, the petitioner appealed the decision dated 14.11.2022 before the Debt Recovery Appellate Tribunal (hereafter '**the DRAT**'). The petitioner's appeal was numbered as MA No.06/2023. In the meanwhile, BFL issued an e-auction notice dated 26.11.2022. The



petitioner filed an application seeking stay of the said e-auction notice before the Learned DRT, which was dismissed by the order dated 29.12.2022. The said order has not been placed on record.

7. Before the DRAT, the petitioner sought time to make the necessary pre-deposit to maintain the said appeal, however, the petitioner had failed to do so.

8. The auction of the mortgaged property pursuant to the e-auction notice dated 26.11.2022 did not fructify. Thereafter, BFL issued a fresh e-auction notice dated 21.04.2023, fixing the date for conducting the auction of the mortgaged property as 12.05.2023.

9. The petitioner, once again, moved the DRT seeking stay of the e-auction notice dated 21.04.2023, which was dismissed by the order dated 12.05.2023 which is impugned in the present petition.

10. It is apparent from the above that the petitioner, despite availing the alternate remedy of filing an appeal before the DRAT, has failed to comply with the necessary condition of making the pre-deposit despite sufficient time. As noticed at the outset, the essential facts are not disputed – the borrowers had availed the finance assistance from BFL and had also created a security interest in respect of the mortgaged property. Clearly, in the circumstances, BFL cannot be interdicted from enforcing its security interest in accordance with the provisions of the SARFAESI Act.



11. The learned counsel appearing for BFL states that the e-auction, scheduled on 12.05.2023 was conducted successfully. The sale of the mortgaged property in favour of the auction purchaser was confirmed. The auction purchaser has paid the entire consideration and the sale deed for the mortgaged property has been executed.

12. The petition is without merit. The challenge to the orders impugned in this petition is insubstantial. The present petition is unjustified imposition on judicial time. We, accordingly dismiss this petition with the cost quantified at ₹25,000/-. The cost shall be deposited with the Delhi High Court Legal Services Committee within a period of two weeks from today.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 20, 2023
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