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

\+ CM(M) 1050/2023 & CM APPLs. 34146-47/2023

VIKASH MATHUR ..... Petitioner

Through: Mr. Anjaneya Mishra, Advocate.

versus

KOTAK MAHINDRA BANK AND ANR ..... Respondent

Through: Mr. Yashvardhan Singh, Advocate.

% Date of Decision:10th July, 2023

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 34147/2023(*for exemption*)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1050/2023& CM APPL. 34146/2023

1. This petition has been filed under Article 227 of the Constitution of India impugning the order dated 13.06.2023 passed by the Debt Recovery Tribunal-I, Delhi ("DRT") in IA No. 2571/2023 filed in TSA No.539/2022, whereby the DRT has dismissed the application filed by the Petitioner for restraining the Respondent No. 1 from taking physical possession of the property bearing Unit no.007, ground floor, Tower CS 10, Supertech Capetown, Plot no.GH-011A, Sector-74, District Gautam Budh Nagar, Noida UP-201306, having a super area of 1150 Sq. Ft. with one covered car parking ('subject property').

The brief facts as stated in the petition are here as under :-

2. It is stated that on 27.05.2017, the Petitioner and his wife i.e., Smt. Abha Sinha took a housing loan facility of Rs. 49,83,000/- from HDFC Bank, Munirka branch at the interest rate of 8.75% per annum. It is stated that during the subsistence of the said loan facility, the Petitioner came into a contact with the Respondent No.2 who is a Non-Banking Finance Company ('NBFC') and started negotiation for taking over the existing housing loan facility rendered by HDFC with a better interest rate of 8.50% per annum on the remaining principal amount of Rs. 49,09,452/-.

2.1. It is stated that Respondent No. 2 took over the existing loan facility and foreclosed the said loan on 30.06.2018 by making a payment of Rs. 49,52,595/- to HDFC Bank.

2.2. It is stated that the Petitioner received a sanction letter dated 15.06.2018 provided by Respondent No. 2 which was unsigned and not in conformity with the quotations which were mutually decided between the Petitioner and the Respondent No.2

2.3. It is stated that the Respondent No.2 sanctioned two loans in favour of the Petitioner and his wife qua two separate loan accounts bearing No. 401HSL81227185 & 401HFS81227784. It is further stated that in loan account bearing No. 401HSL81227185, the Respondent No.2 sanctioned Rs. 47,84,000/- as home loan for a period of 240 months at the rate of interest 8.50% per annum and in the other loan account bearing no. 401HFS81227784, the Respondent No.2 sanctioned Rs. 7,07,000/- as personal loan for the period of 120 months at the rate of interest 9.35% per annum.

2.4. It is stated that on 03.03.2020 the Respondent No. 1 sent a letter to the

Petitioner and his wife informing that, from the effective date i.e., 26.12.2019; Respondent No. 1 has become solely entitled to "Receivables" arising out of Credit Facility granted under facility documents.

2.5. It is stated that subsequently, Respondent No. 1 *vide* demand notice dated 09.10.2020 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act, 2002') *qua* the home loan account bearing no. 401HSL81221785, demanding a total sum of Rs. 54,98,361/- alongwith interest and penalty as on 30.09.2020 within a period of 60 days from the date of notice.

2.6. It is stated on 10.11.2020, the Petitioner and his wife replied to the notice dated 09.10.2020 and submitted their objections under Section 13(13A) of the SARFAESI Act, 2002 before the Respondent No.1.

2.7. It is stated that Respondent No. 1 arbitrarily took measures under section 13 (4) of the SARFAESI Act, 2002 by issuing and affixing the possession notice dated 08.01.2021 under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002 for taking the possession of the subject property.

2.8. The Petitioner aggrieved by the notice dated 08.01.2021; filed a Civil Writ Petition No. 1335 of 2021 titled as *"Vikas Mathur & Anr. Versus Union of India & Ors."* whereby, *vide* order dated 02.02.2021 this Court had directed the DRT to adjudicate the legal implications of the notification dated 24.02.20220 issued by the Ministry of Finance and decide whether the notification in question is prospective or retrospective in nature. Further, this Court also directed DRT to decide whether the case of the Petitioner falls within the exception created in the said notification.

2.9. It is stated that in pursuance to the directions passed by this Court *vide* order dated 02.02.2021, the Petitioner and his wife filed Securitization Appeal ('SA') under Section 17(1) of SARFAESI Act, 2002 before the DRT.

2.10. It is stated that the Respondent No. 1, instead of waiting for the disposal of the said SA filed by the Petitioner in pursuance to the order dated 02.02.2021 passed by a Coordinate Bench of this Court in W.P.(C) No. 1335/2021, approached the competent Court ('ADM') by filling an application under Section 14 of the SARFAESI Act, 2002 for taking possession of the subject property.

2.11. It is stated that *vide* order dated 31.01.2023 the ADM, allowed the Respondent No.1 to take the possession of the subject property of the Petitioner and the same was taken on 21.06.2023.

Arguments of the Petitioner

3. The learned counsel for the Petitioner states that the DRT without deciding the issue that whether the Respondent No.2 was a *'Financial institution'* as defined under section 2 (1) (m) of SARFAESI Act, 2002 to take recourses under the provisions of SARFAESI Act, 2002, the impugned order dated 13.06.2023 was passed with the *prima facie* view that the measures taken by the Respondent No. 1 under section 13(2) and 13(4) of the SARFAESI Act, 2002 are valid.

3.1. He states that the Respondent No.1 and its representatives mischievously and unscrupulously forged the signatures of the Petitioner and his wife on the loan agreement and the sanction letter dated 15.06.2018 provided to the Petitioner and his wife is also not in conformity with the format as shown on the official website of the Respondent No.2.

3.2. He states that the DRT passed the impugned order in complete disregard to the order dated 02.02.2021 passed by the Coordinate Bench of this Court in W.P.(C) 1335/2021 whereby, the DRT was directed to decide whether the case of the Respondents herein fall within the exception created in the notification dated 24.02.2020 issued by Ministry of Finance.

3.3. He states that notification 24.04.2022 issued by Ministry of Finance, prospectively allowed NBFC having assets worth of Rs. 1,00,00,000/- or above, subject to the condition that the security debt should be Rs. 50,00,000/- and above, to take recourses under the provisions of SARFAESI Act, 2002. He further relies upon the said notification and states that the Petitioner and his wife took a loan (secured a debt) of Rs. 47,84,000/-, which is below the pecuniary limit of Rs. 50,00,000/-.

3.4. He states that the Petitioner was declared Non-Performing Asset ('NPA') on 01.08.2019, the assignment deed was executed on 26.12.2019 and for that the said reason only the acts of the Respondents initiating SARFAESI proceedings should be stopped by the exception created in the notification dated 24.02.2022. He further states that the said notification ought to be read prospectively and not retrospectively.

4. This Court has heard the counsel for the Petitioner and perused the petition.

4.1. The Petitioner has admitted before the DRT that there is an overdue amount of Rs. 25 lakhs due and payable to Respondent No. 1; however, the Petitioner has not deposited the said amount on the plea that he is not in a financial position to pay the said amount.

4.2. A perusal of the petition shows that the Petitioner herein defaulted in repayment of the loan in 2020; the liability is not disputed by the Petitioner, however, since then the Petitioner has been filing multiple proceedings to resist the proceedings initiated by the Respondents to recover the outstanding loan amount.

4.3. Admittedly, the Petitioner herein had approached this Court in W.P.(C) 1335/2021 raising identical issues of lack of jurisdiction. This Court after considering the submission of the Petitioner had declined to entertain the said petition and relegated the Petitioner to his remedy before the DRT. The relevant portion of the order of this Court dated 02.02.2021 reads as under:

> *"4. Although the measures taken by a bank under the Act are amenable to challenge before the Debt Recovery Tribunal ["DRT"] in terms of Section 17 of the Act, Mr. Anjaneya Mishra, learned counsel for the petitioners, apprehends that the issue in question cannot be decided by the DRT. Mr. Chetan Sharma, learned Additional Solicitor General for Union of India, Mr. Harshit Singh Sisodia, learned counsel for KMB and Mr.Katyal, learned counsel for BHFL, on the other hand, submit that the question of whether the Act is applicable to the present transaction is also an issue which the Tribunal can consider while adjudicating the legality of the measures taken by KMB. It is specifically submitted that the question of interpretation of the notification dated 24.02.2020 can also be considered by the DRT. The statements of learned counsel for the respondents, in my view, allay the apprehension expressed by Mr. Mishra.*
> *5. The present petition is therefore disposed of, relegating the petitioners to their alternative remedy before the DRT. All the contentions of the parties are reserved for adjudication by the DRT in accordance with law."*

4.4. In the opinion of this Court, the present petition cannot be maintained by the Petitioner to agitate the same issues, which were duly considered by this Court by its earlier order dated 02.02.2021.

4.5. The Petitioner acted upon the order dated 02.02.2021 and approached the DRT by filing an application under Section 17 (1) SARFAESI Act, which is pending before the DRT and issues of jurisdiction raised by the Petitioner are also pending consideration as observed by the DRT in the impugned order dated 13.06.2023.

4.6. The Petitioner in this petition admits that he has a statutory remedy of filing an appeal under Section 18 of the SARFAESI Act to assail the impugned order dated 13.06.2023. The Petitioner also admits that the issues raised in this petition are capable of determination by the competent authority.

4.7. This Court finds no reason to entertain the present petition, when the Petitioner has a statutory remedy available to him to assail the impugned order. In the facts of this case, this Court is not persuaded to exercise its extraordinary jurisdiction to interfere in this matter.

5. Accordingly, the present petition is dismissed. All pending applications are also disposed of.

MANMEET PRITAM SINGH ARORA, J

JULY 10, 2023/asb/*hp*