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

% *Date of Decision: 08.08.2023*

\+ **W.P.(C) 10447/2023 & CM APPL. 40503/2023 & CM APPL. 40504/2023**

MS KARTIK REAL NEST SERVICES ..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with Mr. Sidharth Chopra, Mr. Shekher & Mr. Navneet Thakran, Advs.

versus

CENTRAL BANK OF INDIA AND ORS ..... Respondents

Through: Mr. Sudhir Makkar, Sr. Adv. with Mr. Ravi Kapoor & Mr. Rishav A, Advs.
Mr. S. A Khan & Mr. Shadab Khan, Advs. for Central Bank of India.

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

VIBHU BAKHRU, J.

1. Issue notice.

2. The learned counsel appearing for the respondents accepts notice.

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

> "a. Issue a writ of mandamus or any other appropriate writ, order or direction to the Hon'ble Debts Recovery Appellate Tribunal, Delhi to decide the Regular Appeal No. 104/2022 titled as "*Kailash Mehendiratta Vs. Central Bank of India & Ors*." on the next date of hearing.
>
> b. Issue a writ of mandamus or any other appropriate writ directing the Respondent No. 1 to handover the physical possession of the property bearing No. Plot No. 34, Block B, situated at Sector – 63, Phase III, Noida. Uttar Pradesh area 800 sq. mt. to the Petitioner."

4. The petitioner is an auction purchaser who purchased the property described as Plot No.34, Block-B, situated at Sector-63, Phase III, Noida, Gautam Buddha Nagar, U.P., Area -800 Sq. Mtr in an auction conducted at the instance of the respondent no.1 (Central Bank of India)

5. Admittedly, the petitioner has paid the entire consideration to the respondent bank, however, the petitioner has not received the possession of the property as yet on account of the applications filed by the respondent nos.2 and 3. It is the case of respondent no.2 that he had entered into an agreement to purchase the property from the owner and had paid part consideration. Mr. Makkar, learned senior counsel, who appears for respondent no.2 also states that the balance consideration for the purchase of the said property was also deposited by respondent no.2 pursuant to the orders passed by the Debts Recovery Tribunal (hereafter '**the DRT**')

6. The petitioner is essentially aggrieved as it has not received the possession of the property despite paying the entire consideration and despite the securitization applications (SA) filed by the respondents having been dismissed.

7. The respondents had filed an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI** Act') being SA No.79/2020 captioned ***Ravinder Kaur (since deceased), Represented through legal representative v. Central Bank of India***. The said application was disposed of by the learned DRT by an order dated 14.06.2022. The operative part of the said order reads as under: -

> "54. In the light of above, the order dated 17/04/2020 to the effect, 'not confirming the auction' stands vacated. The respondent bank is directed to appropriate the said 75% bid amount along with up-to-date interest in the loan account of borrowers and issue sale certificate in favour of auction purchaser- respondent no-5.
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> 55. After the completion of the said appropriation of the amount in terms of above paragraph, the respondent no-1 bank shall handover the possession of property-in-question to the respondent no- 5/auction purchaser firm at the earliest.
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> 56. In sequel of the above said discussion, there is no irregularity or ambiguity in the actions/ measures of the respondent bank; hence both the securitization applications, having no merits, stand dismissed with no orders to costs."

8. Thereafter, respondent no.2 had preferred a petition under Article 227 of the Constitution of India being CM(M) No.609 of 2022 titled as ***Kailash Mehendiratta Vs. Central Bank of India & Ors.*** before this Court, which was disposed of on 24.06.2022 in terms of the following order : -

> "The petition has been filed seeking stay of order dated 14.06.2022 passed by Ld. Presiding Officer, DRT-III, Delhi in S.A. No. 207/2019 titled as Kailash Mehandiratta Vs. Central Bank of India & Ors.
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> Learned Senior Counsel for the petitioner has submitted that since DRAT is on vacation, therefore, he may be granted interim protection till that time to file an appeal against the impugned order dated 14.06.2022 before the Appellate Court.
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> Mr.S.A.Khan, Advocate appearing on behalf of R-1/Central Bank of India has vehemently opposed the grant of any relief. Learned counsel submits that the petitioner instead of moving any application for urgent listing before the Tribunal, directly approached this Hon'ble Court.
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> Learned counsel submits that there is no urgency in the matter and matter is liable to be dismissed outrightly as sale is already confirmed and sale certificate has already been issued on 15.06.2022.
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> I have considered the submissions. It has been informed that DRAT is on vacations till 04.07.2022.
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> The learned senior counsel for the petitioner submits that he is restricting his prayer only to the extent that he may be given 15 days protection for approaching DRAT.
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> Let the appropriate appeal be filed before DRAT by 15.07.2022. No further coercive action be taken till then.

Petition is disposed of. Copy of this order be given dasti."

9. As is apparent from the above, respondent no.2 who is in possession of the property in question was protected by this Court till 15.07.2022 to enable respondent no.2 to file an appeal before the learned Debts Recovery Appellate Tribunal (hereafter '**the DRAT**').

10. Thereafter, respondent no.2 filed another writ petition being W.P.(C) No.10515/2022. The said petition was also dismissed as withdrawn on 13.07.2022, however, the protection extended to respondent no.2 was extended till 30.07.2022.

11. Respondent no. 2 has since filed an appeal before the learned DRAT and the arguments in the said appeal have been heard on a number of hearings thereafter. The orders were also reserved on 19.10.2022 but the matter was placed for clarification thereafter and has subsequently been adjourned. The appeal is pending before the learned DRAT.

12. Concededly, respondent no.2 has not secured any order staying the operation of the order passed by the learned DRT. The protection, granted by this Court in terms of the order dated 24.06.2022 in CM (M) 609/2022 & the order dated 13.07.2022 in WPC No.10515/2022, has since elapsed. The learned counsel appearing for the Central Bank of India states that a receiver has already been appointed by the concerned Sub Divisional Magistrate (SDM). However, it appears that respondent bank (Central Bank of India) has not taken sufficient steps for implementing the orders of the learned DRT. Consequently, the possession of the property in question has not been handed over to the

petitioner.

13. In view of the above, we consider it apposite to dispose of this petition by requesting the learned DRAT to consider the pending appeal as expeditiously as possible. In the event that respondent no.2 is unable to secure any interim order within a period of one week from today, the respondent bank shall take immediate steps for implementing the orders of the learned DRT.

14. We clarify that all rights and contentions of the parties are reserved and we have not expressed any opinion on the merits of the disputes raised by the parties.

15. It is clarified that the learned DRAT shall not construe this order as entitling respondent no.2 to any interim relief, which can be automatically extended during the pendency of the appeal. The learned DRAT shall consider respondent no.2's appeal uninfluenced by any observations made in this order or the orders passed in CM (M) 609/2022 or WPC No.10515/2022.

16. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 8, 2023
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