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

Date of Decision: 31st August, 2023

\+ **LPA 610/2023 & CM APPLs. 45005/2023, 45006/2023**

SHRI GIRISH BANSAL AND ORS ..... Appellants

Through: Ms. R.K. Chanda and Mr. C.S. Rathore, Advocates.

versus

SH. YASHPAL SINGLA AND ORS ..... Respondents

Through: Mr. Vishal Khattar, Advocate for R-2. Ms. Mehak Nakra, ASC (Civil), GNCTD with Mr. Abhishek Khari and Ms. Disha Chaudhary, Advocates for R-4. Mr. Vivek Goyal, CGSC with Mr. Gokul Sharma and Mr. Shivam Singh, Advocates for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Appellants claim ownership of properties bearing nos. B-388, Gali No. 18 and B-405, Gali No.17 at Bhajanpura, Delhi-110053. They executed sale deeds in respect of the said properties and received the sale consideration through cheques. However, they contend that immediately

after the execution of the sale deeds, Respondent No. 1 duped them by prevailing upon them to return the sales consideration on a false assurance that they would be replaced with new ones. The cheques issued by Respondent No. 1 in *lieu* of the returned cheques, were dishonored on being presented for encashment. Aggrieved, the Appellants have initiated criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter '*NI Act*'], which are pending consideration before the Metropolitan Magistrate, Karkardooma Court, Delhi. Additionally, they have filed civil suits[1] for cancellation of the sale deeds which are also pending consideration before the District Judge, Karkardooma District Court, Delhi.

2. In the meantime, the Appellants realized that the properties were mortgaged with Respondent No. 2–Hinduja Leyland Finance Ltd., a Non-Banking Financial Company [hereinafter '*NBFC*']. On account of default by the borrower, the NBFC initiated action in respect of the mortgaged properties by issuing a notice dated 04th March, 2019 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [hereinafter '*SARFAESI Act'*]. The Appellants have submitted a reply thereto, but the grievance remained unresolved. Consequently, apart from the legal proceedings noted above, they invoked Article 226 of the Constitution of India by filing a writ petition, being W.P.(C) 14584/2022, seeking a direction to restrain the NBFC from taking physical possession of the said properties.

3. The Ld. Single Judge has declined to entertain the writ petition *vide* impugned judgement dated 11th August, 2023 in light of the efficacious

[1] Bearing no. 161/19 and 162/19.

statutory remedy available to the Appellants under SARFAESI Act. The learned Single Judge holds that the Appellants must take recourse to Section 17 of the SARFAESI Act and all rights and contentions of the parties have been left open.

4. The Appellants are aggrieved with the above outcome and have filed the instant intra-court appeal asserting that the impugned judgment has been passed in haste without going into the contentions urged by the Appellants. They strongly contend that the subject properties are not the secured assets of the NBFC. This is underscored by referring to a complaint filed with the Economic Offences Wing, Delhi, by the NBFC itself, levelling serious allegations against their own officials, who were involved in the mortgage of the said properties leading to their arrest. Accordingly, they submit that the mortgage of the subject properties in favor of the NBFC, becomes *non-est.* They also argue that the Appellants are neither borrowers nor guarantors in respect of the secured assets and therefore, the action under Section 13(4) of the SARFAESI Act is entirely misconceived. Thus, the writ court ought to have been entertained and action initiated against the Appellants under the SARFAESI Act, ought to be quashed.

5. Counsels for Appellants have fervently argued their case and have been patiently heard, but we remain unconvinced. The writ petition is premised on the action initiated by the NBFC under Section 14 of the SARFAESI Act before the Court of Chief Metropolitan Magistrate, towards taking possession of the subject properties. The Ld. Single Judge taking note of the judgment of the Supreme Court in ***United Bank of India v. Satyawati***

Tondon & Ors.[2] and ***Phoenix ARC Private Ltd. v. Vishwa Bharati Vidya Mandir & Ors.***[3], has declined to entertain the writ petition holding that the Appellants have a remedy of agitating their grievance under Section 17(1) of the SARFAESI Act.

6. The judgments referred to above, have been extracted in the impugned judgment and clearly align with the view expressed by the Ld. Single Judge. If proceedings are initiated under SARFAESI Act and a person is aggrieved by any action thereunder, the same must be challenged through the remedies under the said Act and a writ petition would not lie. In our view, the decision of the learned Single Judge is in consonance with the view expressed by the Supreme Court in the aforenoted judgments which interprets the law on the subject.[4]

7. Further, the contention of the Appellants that since they are neither the borrowers, nor the guarantors, the remedy under Section 17 of the SARFAESI Act is unavailable, has no legal foundation. A bare reading of Section 17 indicates that the remedy provided therein, is available to any person aggrieved by any of the measures referred to in Section 13(4) of the SARFAESI Act taken by the secured creditor. The writ jurisdiction being an equitable and discretionary remedy in nature, has to be exercised in exceptional circumstances, as held in a catena of judgments and unfortunately, for the Appellants, the facts of the case do not meet the said criteria.

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[2] (2010) 8 SCC 110
[3] (2022) 5 SCC 345
[4] Authorized Officer, State Bank of Travancore and Ors. v. Mathew K.C., 2018 SCC Online SC 55; Agarwal Tracom Pvt. Ltd. v. Punjab National Bank and Ors., 2017 SCC Online SC 1368; General Manager, Sri Siddeshwara Cooperative Bank Limited and Anr. v. Ikbal and Ors., 2013 SCC Online SC 755.

8. Thus, in our opinion, since there was an efficacious statutory remedy available with the Appellants, the view taken by the learned Single Judge for not entertaining the writ petition, cannot be faulted. We find no merit in the present appeal.

9. Dismissed along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

AUGUST 31, 2023/as