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

% *Date of Decision: 20th October, 2023*

\+ **W.P.(C) 14018/2023 & CM APPL. 55408/2023**

VINOD SHARMA ..... Petitioner

Through: Mr. Ashish Kumar Sharma & Mr. Vipin Singh, Advs.

versus

CHOLAMANDALAM INVESTMENT AND FINANCE CO. LTD ..... Respondent

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. Sidharth Chopra, Mr. Navneevt T. & Mr. Aditya Raj, Advs.

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

VIBHU BAKHRU, J.

CM APPL. 55409/2023 (*for exemption*)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 14018/2023 & CM APPL. 55408/2023

3. The petitioner has filed the present petition, impugning a possession notice dated 04.10.2023 issued by the Court Receiver appointed pursuant to the order dated 29.08.2023 passed by the learned

Chief Metropolitan Magistrate, ('**CMM**'), Central District, Tis Hazari Courts under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**SARFAESI Act**').

4. The said proceedings have been instituted by the respondent for enforcing its security interest in respect of the property described as House No. 1757/14, Shastri Nagar, Delhi-110052, admeasuring 63 sq. yds. (hereafter 'the **subject property**').

5. The petitioner claims that he had purchased the subject property for an agreed consideration of ₹50 lakhs in the year 2013. The petitioner claims that he had purchased the property from one Mr. Gulshan Kumar (*alias* Gulshan Kalra) and Mr. Chintan Kalra. The said persons, hereafter referred to as '**borrowers**', had borrowed certain amounts from the respondent NBFC. The petitioner claims that he had paid a sum of ₹5,00,000/- to the borrowers as *Bayana* at the time of execution of *Bayana* Agreement dated 15.05.2013 and a further sum of ₹5,00,000/- thereafter.

6. Apparently, the borrowers have defaulted in repayment of their dues to the respondent. Consequently, the respondent has instituted the proceedings under the SARFAESI Act.

7. The petitioner had filed a Securitization Application under Section 17 of the SARFAESI Act impugning the order passed by the learned CMM. However, the said Securitization Application was dismissed on 18.06.2022.

8. The petitioner has filed an appeal against the order dated 18.06.2022, being Regular Appeal No. 88/2022 captioned *Vinod Sharma v. M/s. Cholamandal Investment & Finance Co. Ltd.*), before the learned Debts Recovery Appellate Tribunal (hereafter '**DRAT**'). However, the said appeal has not been disposed of as yet.

9. The petitioner is essentially aggrieved as the respondents are now in the process of taking over possession of the subject property.

10. The learned counsel appearing for the petitioner submits that the petitioner had acquired interest in the subject property prior to the same being mortgaged by the borrowers and, therefore, the respondent cannot enforce the said mortgage.

11. We are unable to accept that the petitioner has any interest in the subject property. Admittedly, there is no registered document conveying the title or any interest in the subject property to the petitioner.

12. As noted above, the petitioner's claim rests entirely on a *'Bayana* Agreement*'*, a copy of which has not been annexed with the present petition. Even, according to the petitioner, he had paid a sum of ₹10,00,000/- out of the agreed consideration with respect to the subject property. Since there is no conveyance of the subject property in favour of the petitioner, we are unable to accept that any interference is warranted with the proceedings instituted by the respondent under SARFAESI Act.

13. The petition is, accordingly, disposed of.

14. The pending application also stands disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 20, 2023
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