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

% *Date of Decision: 31.07.2023*

\+ **W.P.(C) 8395/2023**

GOVIND KHANGAWAL & ORS. ..... Petitioners

Through: Mr. Lokesh Baimad, Adv.

versus

HDB FINANCIAL SERVICES PVT LTD ..... Respondent

Through: Mr. Gaurav Srivastava, Adv.

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

VIBHU BAKHRU, J.

1. The petitioners have filed the present petition impugning an order dated 11.05.2023 passed by the learned Debts Recovery Tribunal-I (hereafter '**the DRT-I**') in I. A. No.2437/2023 in SA No.33/2023. The petitioners state that they had availed loans for an amount of ₹24 lakhs and ₹25 lakhs respectively (loan account no.4204616 and 3655996) from the respondent. They also mortgaged their properties described as Unit No. FF-8, Plot No.XII/7870-77, First Floor, Subzi Mandi, Roshanara Road, Delhi-110007 and the property no. H No.14, Third Floor, Sindora Kalan, Siri Nagar Colony, near Rama Ice Cream, Delhi-110052 in respect of the financial facilities availed by them. (loan account no.3655996 & 4204616).

2. Admittedly, the petitioners have defaulted in their re-payment obligations to the respondent. On 29.09.2022, the respondent issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**') in respect of both the loan accounts. The petitioners filed the response to the same on 17.10.2023. It is the petitioners' grievance that without considering their response, the respondent/receiver proceeded against the petitioners under Section 13(4) of the SARFAESI Act, dated 20.12.2022, seeking possession of the property bearing no. H. No.14, Third Floor, Sindora Kalan, Siri Nagar Colony, Near Rama Ice Cream, Delhi-110052.

3. The petitioners filed an application (SA No.33/2023) under Section 17 of the SARFAESI Act impugning the said notice and the steps initiated by the respondent/receiver for taking possession of the mortgaged property.

4. Whilst the aforesaid application was pending, on 25.04.2023, the receiver issued a legal notice to take over the physical possession of the aforementioned mortgaged residential property on 12.05.2023.

5. The petitioners filed an *interim* application (I.A. No. 2437 of 2023) on 02.05.2023, seeking an order restraining the respondent/receiver from taking over the possession, however, the said application was dismissed by the learned DRT-I by an order dated 11.05.2023. The receiver did not take the physical possession of the aforementioned mortgaged property on 12.05.2023 due to the medical

illness and sent another legal notice dated 16.05.2023 to take over the possession of the property on 05.06.2023.

6. The petitioners preferred an appeal (Miscellaneous Appeal No.83/2023) before the learned Debts Recovery Appellate Tribunal (hereafter '**the DRAT**') against the order dated 11.05.2023 of the learned DRT-I which was listed on 23.05.2023. The said appeal, however, was not entertained as the petitioners failed to deposit 25% of the outstanding amount as claimed by the respondent which was mandatory condition for maintaining an appeal.

7. In the meanwhile, the petitioners filed another *interim* application (I.A. No. 2625 of 2023) before the learned DRT-I on 24.05.2023, seeking an order for restraining the respondent/receiver from taking over the possession of the aforementioned mortgaged property. The said application is pending before the learned DRT-I.

8. In the circumstances, the petitioners filed the present petition. The interim orders as sought for by the petitioner were not granted and the respondent/receiver has since taken over the possession of the mortgaged property.

9. The learned counsel appearing for the petitioners submits that the requirement of making a pre-deposit is onerous and harsh, inasmuch as the petitioners' loan accounts were declared as non-performing assets (hereafter **'NPAs'**) only on account of default to the extent of approximately ₹8 lakhs. However, since the entire outstanding has been recalled, 25% of the amount demanded – which is required to be

deposited – exceeds ₹8 lakhs. The learned counsel submits that in the aforesaid circumstances, the petitioners do not have an efficacious remedy.

10. The contentions advanced on behalf of the learned counsel are unmerited. Admittedly, the loan accounts were declared as NPAs as the petitioners have failed to perform their re-payment obligations. The respondent has recalled the amount advanced to the petitioners; therefore, the petitioners are obligated to pay the outstanding amount along with the interest. The assumption that the default was only to the extent of ₹8 lacs and therefore, that is the amount due and payable is erroneous. The petitioners have failed to pay the amount as demanded in terms of the notice issued under Section 13(2) of the SARFAESI Act. Consequently, the respondent is entitled to recourse under Section 13(4) of the SARFAESI Act

11. We find no ground to accede to the prayers made in the present petition. However, considering that the present petition arises out of the rejection of an *interim* order and principal application (SA No.33/2023) has not been decided by the learned DRT-I, we request the learned DRT-I to dispose of the said application on merits after affording the petitioners due opportunity to be heard as expeditiously as possible and preferably within a period of six weeks from today.

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

13. In the meanwhile, the petitioners are also at liberty to approach the respondent bank for resolution of any dispute and settlement of the

dues. Needless to state that if the petitioners approach the respondent, the competent authority shall also take into account the mitigating circumstances that led to the default and the adversity faced by the petitioners.

14. *Dasti* under the signature of the Court Master.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 31, 2023
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