$~36

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

% *Date of Decision: 14th December, 2023*

\+ **W.P.(C) 16084/2023 & CM APPL. 64736/2023**

RAJEEV KHATTAR ..... Petitioner

Through: Mr. L.M. Grover, Mr. O.P. Mathur & Mr. Alok Tiwari, Advs.

versus

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD & ORS. ..... Respondents

Through: Mr. Sidharth Chopra, Adv. with Mr. Navneet Thakran, Adv. for R-1.

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

VIBHU BAKHRU, J.(*Oral*)

CM APPL. 64735/2023 *(for exemption)*

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 16084/2023 & CM APPL. 64736/2023

3. The petitioner has filed the present petition impugning an order dated 21.11.2023 (hereafter '**impugned judgment**'), passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**'), in Miscellaneous Appeal No.203/2023. The petitioner had preferred the said appeal against an order dated 05.09.2023, passed by the learned Debts Recovery Tribunal-I, Delhi (hereafter '**DRT**'), whereby the interim relief sought by the petitioner in his Securitisation Application, being S.A. No.501/2023, was rejected. The learned

DRAT had concluded that there was no illegality or irregularity in the order passed by the learned DRT, and accordingly, had dismissed the appeal.

4. The petitioner claims to be the owner of first floor of the property which is described as Double Storey C-Type tenements, bearing Qtr. No.1/29-A, situated at BAS, Vijay Nagar, Delhi (hereafter '**the subject property**'). He claims that he had acquired the subject property from the borrowers some time in 2018 by a registered Sale Deed dated 13.07.2018, executed by Shri Sanjay Kumar (Respondent No. 2).

5. The subject property was mortgaged to Central Bank of India in the year 2012. Respondent No. 1 claims to be the assignee of the said financial asset. According to Respondent No. 1, it had acquired security interest in the subject property, pursuant to an assignment executed by the Central Bank of India in the year 2016. Thus, the learned DRAT had held that since the subject property was mortgaged prior to execution of the conveyance on the basis of which the petitioner claims title, the petitioner's claim was unsustainable.

6. The petitioner has assailed the impugned judgment passed by the learned DRAT on four fronts. First, the petitioner claims that the steps taken by Respondent No. 1 in respect of the subject property, are contrary to Section 26D of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**'). He submits that Respondent No. 1's interest in the subject property was not registered with the Central Registry, and therefore, it is precluded from taking any steps under the

SARFAESI Act.

7. Second, he submits that the learned DRAT had returned a final finding that the petitioner did not have any interest or title in the subject property and its remedy did not lie before the learned DRT or DRAT under the SARFAESI Act. He submits that the petitioner had filed an appeal before the learned DRAT against an interim order passed by the learned DRT, therefore, the DRAT could not have returned final findings that have the effect of finally concluding the petitioner's Securitisation Application, which is pending before the learned DRT.

8. Third, he submits that Respondent No. 1 had secured an order dated 10.05.2023 from the learned Additional Chief Metropolitan Magistrate ('**ACMM**') for taking possession of the subject property by making a false statement that the borrowers were in possession of the subject property. He contended that the petitioner was put in possession of the subject property way back in the year 2018, and therefore, the order passed by the learned ACMM under Section 14 of the SARFAESI Act, is required to be set aside.

9. Lastly, he submits that two floors of the subject property are being put to auction at a reserve price of ₹58 lakhs. The reserved price of the first floor of the subject property, thus, ought to be about ₹28 lakhs, and he is willing to deposit the said amount with Respondent No. 1 to secure an interim order.

10. The learned counsel for Respondent No. 1 has opposed the relief sought by the petitioner. He submits that the statement made by the petitioner that he was in possession of the first floor of the subject

property is *ex facie* false. He contends that the petitioner had filed a Suit (CS No. 1301/2023 captioned *Rajeev Khattar v. Sanjay Kumar & Ors.*). In the said suit, the petitioner had sought interim orders in regard to the order passed by the learned ACMM. He submits that in the said Suit, the petitioner (plaintiff in the Suit) has disclosed his residential address as H-3/58, First Floor, Sector-18, Rohini, New Delhi-110089. The residential address of Respondent No. 2, who is arrayed as Defendant No. 1 in the said Suit, is disclosed as 1/29, BSA, Vijay Nagar, Delhi-110009. He contended that this clearly indicates the petitioner's claim in respect of the property is a collusive one.

11. We have heard the learned counsel for the parties.

12. The first and foremost question to be addressed is whether action instituted by Respondent No. 1 is barred by Section 26D of the SARFAESI Act. The said section is reproduced below:

> ***"26D. Right of enforcement of securities.****--Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry."*

13. It is apparent from the above that any action under the SARFAESI Act in respect of any property is proscribed, unless the security interest has been registered with the Central Registry.

14. In the present case, Respondent No. 1 has produced a photocopy of record from the Central Registry of Securitisation Asset Reconstruction and Security Interest of India ('**CERSAI**') indicating that an equitable mortgage in respect of property described as 1//29A,

Ground Floor, Double Storey, Vijay Nagar as well as property described as 1//29, Double Storey, Vijay Nagar, Mother Dairy, New Delhi is registered with CERSAI.

15. The learned counsel for the petitioner states that the address is incorrect inasmuch as the house number is referred to as 1//29A, but the correct address is 1/29A, Vijay Nagar, New Delhi. He also says that the floor mentioned is ground floor, and not the first floor.

16. We find that the said contention as insubstantial. The petitioner cannot derive any benefit from a typographical error of a double slash (//) instead of a single slash (/) in the address of the mortgaged property. Concededly, there is no other property bearing the address No.1//29A. It is also clear from the record of CERSAI that the property is described as a "Double Storey" property. Thus, both the floors – ground floor and the first floor – are covered under the registration with the CERSAI

17. According to the petitioner, the ground floor bears the number 1/29 of the same building and the first floor bears the number 1/29A. Description of the property as double storey makes it amply clear that the equitable mortgage, registered with CERSAI, is in respect of the entire two storey building, of which the petitioner claims to be an owner of one floor (first floor).

18. The learned DRAT had considered the said contention and had rejected the same in the following manner:

> *"15. So far as the contention of the Ld. counsel for the appellant that the creation of security interest in favour of the respondent FI was not registered with CERSAI is concerned, it is clear from the copy of Registration of Security Interest*

Acknowledgement Report, downloaded on 27.09.2023 and filed along with the reply of respondent FI, that the creation of security interest over the property in favour of the respondent FI was duly registered with CERSAI on 09.11.2016. On the second page of the Report, the property has been described as 1//29A, Ground Floor, Double Storey Vijay Nagar Mother Dairy, New Delhi and on the third page the address of the property has been given as 1//29, Double Storey Vijay Nagar. All the above facts confirm that the creation of security interest over the property was duly registered with CERSAI on 09.11.2016. So far as contention of Ld. counsel for the appellant that the double slash (//) between 1 and 29 in the description of the property creates doubt is concerned, this Tribunal is of the opinion that the double slash (//) may be a typographical or technical error while entering the data onto the CERSAI site and it does not vitiate the proceedings conducted by respondent FI under the SARFAESI Act."

19. We find no fault with the said reason.

20. The petitioner's contention that the mortgage in respect of the subject property was not registered with CERSAI is insubstantial.

21. The contention that the learned DRAT had rejected the petitioner's claim finally disregarding that the petitioner's Securitisation Application was pending before the learned DRAT is also unmerited.

22. The findings returned by the learned DRAT are necessarily to be read as *prima facie* findings and cannot be read as the final determination of any of the petitioner's claims that are pending consideration before the Learned DRT, in his Securitisation Application.

23. The contention that Respondent No. 1 had made a false statement, and suppressed the fact regarding possession of the subject property, is also unmerited.

24. We find merit in Respondent No.1's contention that the petitioner has been taking varying stands. In the suit filed by the petitioner, the petitioner has not described his residence as the subject property. More importantly, the petitioner had described the address of Respondent No. 2 as property bearing No.1/29A, BSA, Vijay Nagar, Delhi-110009. This runs contrary to be petitioner's case that respondent no.1 had secured orders for taking over possession of the subject property on an incorrect assumption that respondent no.2 was in possession of the same.

25. The petitioner's offer that the auction of the subject property should be stayed on his depositing ₹28 lakhs with Respondent No. 1, is an offer that is required to be made to the Respondent No. 1, and no orders in this regard can be passed.

26. *Prima facie*, it is established that Respondent No. 1 has a security interest in the subject property, and is thus entitled to enforce the same in accordance with the SARFAESI Act. Thus, it would not be apposite to restrain the auction of the subject property.

27. Having stated above, we also clarify that the petitioner is at liberty to participate in the auction and submit a bid in accordance with its terms.

28. The petition is dismissed in the aforesaid terms.

29. Pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 14, 2023 / "SK"