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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + W.P.(C) 5900/2024, CM APPL. 24334/2024 & CM APPL. 24335/2024

YASHPAL ANAND Petitioner

Through: Mr. Dinkar Singh, Mr. S. Hasan
 Isfahani and Mr. Rohit Singh,
 Advocates

versus

TATA CAPITAL HOUSING FINANCE LTD. & ORS.
 Respondents

Through: None

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Date of Decision: 29th April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 24335/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 5900/2024 & CM APPL. 24334/2024

1. Present petition has been filed under Articles 226 and 227 of the Constitution of India, seeking quashing of the order dated 28th February, 2024 passed by Debt Recovery Appellate Tribunal, New Delhi (DRAT), in Misc. Appeal No. 254 of 2023. The Petitioner further seeks setting aside of



the order dated 03rd October, 2023 passed by the Debt Recovery Tribunal-II (DRT) in S.A. No. 345 of 2023.

2. The Petitioner filed an application bearing no. S.A. No. 345 of 2023, challenging the action undertaken by the Respondent No.1 (Respondent Bank) under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) qua the property being Front Side Portion, Second Floor Built-up, Northern Side of Plot No.20, admeasuring 398.275 Sq. Yds., out of total area admeasuring 796.55 Sq. Yds., situated at Block A, Naraina Vihar, New Delhi ('subject property').

3. The action under SARFAESI Act has been initiated by Respondent Bank against Respondent Nos. 2 and 3 being the principal borrowers. The Petitioner has objected to the aforesaid action on the ground that part of the subject property belongs to him.

4. The DRT vide impugned order dated 03rd October, 2023, has rejected the interim relief sought for by the Petitioner, holding that prima facie there appears no case in favour of the Petitioner and also observing that balance of convenience also does not lie in favour of the Petitioner. The SA No. 345/2023 filed by the Petitioner continues to remain pending.

5. The said order of the DRT was challenged before the DRAT in Misc. Appeal No. 254 of 2023. The DRAT after examining the contents of the sale deed dated 09th July, 2019 standing in the name of Respondent No. 2, dismissed the appeal *in limine* and did not interfere with the order of the DRT.

6. Learned counsel for the Petitioner states that Petitioner and his brother Sh. Pushp Anand were joint owners of freehold residential property bearing



No. 20, Block-A, measuring 796.55 Sq. yards situated at Naraina Vihar, New Delhi qua a conveyance deed dated 06th April, 2000. He states that the said property was partitioned vide a registered partition deed dated 25th June, 2004. He states that in the light of said partition deed Petitioner became the owner of ground floor, first floor, second floor with entire terrace over second floor, at Northern Side part, of the said property measuring 398.275 Sq. Yds. ('Northern side plot').

6.1. He states that this Northern side plot was re-constructed by the Petitioner; and the Petitioner agreed to sell the constructed second floor along with land admeasuring 39.275 Sq. Yds to the Respondent Nos. 2.

6.2. He states that a sale deed dated 09th July, 2019 was executed between the Petitioner and Respondent No.2. He states that consequent to the said sale deed though the Petitioner and the Respondent No.2 became joint owner of the subject property; however, the Petitioner is owner of 359 Sq. Yds. and Respondent No.2 is the owner of 39.275 Sq. Yds of the Northern side plot.

6.3. He states that it was orally agreed between the parties that the possession of the portion sold was to remain with the Petitioner and the possession of the same was to be given to the Respondent No.2 after partition.

6.4. He states that the Respondent No.2 mortgaged his portion of the property with the Respondent No.1. He states Respondent No.2 defaulted in repayment of the loan and consequently the Respondent No.1 issued notices under Section 13 (2) and Section 13 (4) of the SARFAESI Act.

6.5. He states that in the earlier notice issued by the Respondent No.1 dated 13th March, 2023 under Section 13 (2) of the SARFAESI Act, the size



of the mortgaged property was mentioned as 39.275 Sq. Yds. He states that the Respondent No.1 issued subsequent notice 18th April, 2023 under Section 13 (2) of the SARAFESI Act, wherein the area of mortgaged property was wrongly mentioned as 398.275 Sq. Yds. He states that the auction sale by Respondent No. 1 is with respect to the constructed second floor in the building standing on the Northern side plot.

6.6. He states that since the Petitioner is neither a co-borrower nor a guarantor, no action can be taken by the Respondent No.1 against the portion owned and in possession of the Petitioner.

7. We have heard the learned counsel for the Petitioner and perused the record.

8. A perusal of the sale deed dated 09th July, 2019 makes it evident that the entire 2nd floor in the new residential building constructed on the Northern side plot has been sold by Petitioner to Respondent No. 2. The said building has been constructed on a plot size admeasuring 398.275 sq. yds. The learned counsel for the Petitioner admits that the Respondent No. 1 has taken over physical possession of the constructed second floor and the auction sale is also for the said second floor.

9. The said sale deed has been executed for valuable consideration of Rs. 2,37,00,000/- paid by Respondent No. 2 to the Petitioner and it records the handing over of the physical and vacant possession of the Second Floor to Respondent No. 2. Thus, the contention of the Petitioner that no possession was handed over is contrary to the contents of the said sale deed.

10. In our considered opinion, the aforesaid action of Respondent No. 1 is in inconformity with the sale deed dated 09th July, 2019 and therefore, the prima facie opinion expressed by the DRAT and DRT does not merit any



interference in this petition. No ground is made out for staying the scheduled auction sale.

11. Accordingly, the present petition is dismissed along with pending applications. Needless to state that the observations made by the DRAT in its impugned order dated 28th February, 2024 and in this order are prima facie in nature and therefore, DRT will decide S.A. No. 345/2023 without being influenced by the observations made herein.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 29, 2024/hp/sk

Click here to check corrigendum, if any