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

+ **CS(OS) 358/2022 & I.A. 9459/2022, I.A. 9460/2022**

MANISH JAIN & ANR.Plaintiffs

Through: **Mr. Ishan Dewan, Mr. V Siddharth,**
Advocates for plaintiff no. 1.

versus

SANJEEV JAINDefendant

Through: **Mr. Vikas Sharma and Ms. Kanchan**
Semwal, Advocates

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 17.09.2024

CS(OS) 358/2022

1. Learned counsel for the plaintiff no. 1 states that physical possession of the suit property bearing No. 74, Defence Enclave, Vikas Marg, New Delhi-110092 ("suit property") has been taken over by the Punjab National Bank in pursuance of the proceedings initiated by the bank under the SARFAESI Act.
2. He states that in fact an auction sale notice for the suit property has been issued by the Punjab National Bank on 09.08.2024.
3. He states that the loan was availed from the bank by a partnership firm known as M/s Modern Construction Company, Delhi ('MCC') and plaintiff nos. 1 and 2 are the partners of the said firm.
4. He states that the partnership firm MCC has availed its remedies *qua* the actions initiated by the Punjab National Bank under the SARFAESI Act.
5. He states, however, since the suit property is presently not available for the purpose of partition, which is the relief sought in the present suit.



6. He states that, therefore, at this stage he has no instructions with respect to the further steps to be taken in these proceedings.
7. Learned counsel for the defendant states that defendant is in no manner concerned with the loan availed by the partnership firm MCC from the Punjab National Bank and is not aware with respect to the current status of the possession of the property or its sale.
8. This Court has perused the auction sale notice dated 09.08.2024 issued by the Punjab National Bank for the sale of the suit property.
9. In the considered opinion of this Court, the present proceedings cannot continue while the physical possession of the suit property has already been taken over by the Punjab National Bank and auction sale notice stands issued. The substratum of these proceedings is the suit property and since the same has been taken over by the bank, therefore, the same is not available for partition. Thus, at this stage the suit has become infructuous.
10. It is, however, clarified that in the event plaintiff nos. 1 and 2 or MCC are able to resolve the claims of Punjab National Bank and the property reverts back to the possession of the plaintiffs nos. 1 and 2, they shall be at liberty to initiate fresh proceeding for partition at that stage.
11. The suit is accordingly disposed of as infructuous with liberty reserved to the plaintiffs.
12. The application stands disposed of.
13. All future dates stand cancelled.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 17, 2024/mt

[Click here to check corrigendum, if any](#)