$~88

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

\+ W.P.(C) 8845/2023 & CM APPL. 13221/2024

DEVENDER KUMAR & ORS. ..... Petitioners

Through: Mr. Gautam Singhal, Adv. with Petitioner no.1 in person.
M: 9811898418
Mr. Rohan Jaitley, Mr. Amit Sharma & Mr. Akshay Sharma, Advs.

versus

IDBI BANK LTD ..... Respondent

Through: Mr. Sanjay Bajaj, Advocate.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **04.03.2024**

1. The present petition has been listed today, on an application of the petitioners being *CM APPL. 13221/2024*. By way of the said application, the petitioners seek stay of the operation of the order dated 19th February, 2024 passed by the learned Chief Metropolitan Magistrate ("CMM") (South - West), Dwarka Courts, New Delhi in *CT Case No. 1259/2023*. There is further prayer for issuance of directions to the respondent-bank to maintain *status quo* with respect to the properties of the petitioners that had been mortgaged with the respondent-bank.

2. The petitioners also pray for extension of time for making the payment of the balance amount of the One Time Settlement ("OTS") arrived at with the respondent-bank on 17th October, 2022.

3. This Court notes that the present writ petition has been filed seeking

directions for extension of time limit for making the balance payment of the OTS till 30th August, 2023 from 30th April, 2023. The present petition further prays for direction to the respondent-bank to accept the balance payment from the petitioners in terms of the OTS arrived at between the petitioners and the respondent, within the extended time.

4. The main contention raised in the present petition is that the petitioners and the respondent had reached a settlement, wherein the petitioner no.1 was required to pay a sum of Rs. 1,42,83,126/- on or before 31st March, 2023 towards the full and final settlement of the loan account in question. It is submitted that the petitioner no.1 could not arrange the balance payment of OTS on or before the 31st March, 2023 and requested the respondent-bank to extend the time limit. At request so made by the petitioner no.1, the time for depositing the balance amount of OTS was extended by the respondent-bank till 30th April, 2023.

5. Since the petitioner no.1 was unable to arrange the balance amount of OTS till 30st April, 2023, the present petition was filed, where a prayer was made that the time period for making the balance payment under the OTS be extended till 31st August, 2023.

6. It is to be noted that the period of 31st August, 2023 has since long expired and the petitioners have not been able to make payment of the balance amount under the OTS to the bank. Rather, by way of *CM APPL. No. 12331/2024*, the petitioners are seeking further extension of time till 31st May, 2024, for payment of the balance amount under the OTS.

7. Further, from the record, it is clear that the respondent-bank has now initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest ("SARFAESI") Act,

2002 against the petitioners.

8. By order dated 19th February, 2022 in *CT Case No. 1259/2023,* learned CMM (South - West), Dwarka Courts, New Delhi has passed an order thereby allowing the application of the respondent-bank under Section 14 (2) of the SARFAESI Act. Further, a Court Receiver has been appointed by the said court to take possession of the following four properties /secured assets of the petitioners:

(i) RZ-72A, Indira Park, East Uttam Nagar, Opposite Janakpuri, New Delhi-110059.

(ii) Property No. 40, Khasra No. 17/9, Vikas Nagar, Uttam Nagar, Aslatpur, New Delhi.

(iii) Property No. 19, Block-F, Jeewan Park, Uttam Nagar, New Delhi-110059.

(iv) H. No. 155, DDA Flats, Pocket-7, Sector-12, Dwarka, New Delhi-110078.

9. Since the respondent-bank has already initiated action against the petitioners under the provisions of SARFAESI Act, the petitioners herein have the liberty to approach the learned Debt Recovery Tribunal ("DRT") under Section 17 of the SARFAESI Act.

10. At this stage, learned counsel appearing for the petitioners submits that the petitioner nos. 2 and 3 are senior citizens and that the secured assets qua which possession notice has been issued, are their residential properties, wherein they are residing.

11. While this Court has full sympathy with the petitioners, however, in view of Section 34 of the SARFAESI Act, it is clear that this Court has no jurisdiction to entertain any application or petition in respect of any matter

to which a DRT or Appellate Tribunal, has jurisdiction. Section 34 of the SARFAESI Act reads as under:

> *"xxx xxx xxx*
>
> *34. Civil court not to have jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*
>
> *xxx xxx xxx"*

12. In view of the aforesaid, this Court is of the view that no fruitful purpose would be served in keeping the present petition as pending.

13. Thus, the petitioners are directed to approach the learned DRT under the relevant provisions of the SARFAESI Act. Upon the petitioners approaching the learned DRT, the DRT shall take up the application /petition of the petitioners expeditiously.

14. Further, the petitioners are also granted liberty to approach the respondent-bank with request to consider their case compassionately, in view of the submissions made by learned counsel for the petitioners before this Court.

15. At this stage Mr. Sanjay Bajaj, learned counsel appearing for the respondent-bank submits that a previous application of the petitioners for extension of time for payment of balance amount under the OTS, has already been rejected.

16. Be that as it may, in view of the submissions made before this Court, liberty is granted to the petitioners to approach the respondent-bank with a

request to consider their case compassionately and in accordance with law.

17. The present petition is disposed of in terms of the aforesaid directions.

18. The next date of hearing, i.e., 16th July, 2024 is cancelled.

MINI PUSHKARNA, J

MARCH 4, 2024/kr