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

\+ W.P.(C) 6596/2024

SANKHAJIT PRAMANIK ..... Petitioner

Through: Mr. Ravi Gupta, Sr. Advocate.

versus

KOTAK MAHINDRA BANK LIMITED ..... Respondent

Through: Mr. Sunil Kumar Vayakkal, Advocate through VC.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **17.05.2024**

CM APPL. 29547/2024 (For restoration of petition)

1. The present application has been filed on behalf of the petitioner under Order IX Rule 4 read with Section 151 CPC for restoration of the present petition.

2. Learned counsel appearing for the petitioner submits that he could not reach the Court due to pressing reasons and thus was unable to attend the hearing in the matter, when the matter was disposed of by this Court.

3. Considering the submissions made by learned counsel for the petitioner, the present petition is restored to its original number and is taken up for hearing today itself.

4. With the aforesaid directions, the present application is disposed of.

W.P.(C) 6596/2024

5. The present petition has been filed with prayer for directions to the respondent-bank to accept the intent of the petitioner to purchase the subject property, i.e., entire ground floor portion having built up area of 125 sq.yds of residential Flat No. 38, located at 52 CR Park, New Delhi.

6. Learned counsel appearing for the petitioner submits that the respondent-bank is not acknowledging the *bona fide* intention of the petitioner to purchase his rented family house/flat, which is the subject property of the action and measures initiated by the respondent-bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act ("SARFEASI"). He submits that the petitioner stays with his family, which includes his elderly father, who is 84 years and is suffering from many diseases.

7. Learned counsel appearing for the petitioner submits that the petitioner is neither the borrower nor the guarantor of the loan and has deposited ₹ 40,00,000/- with the respondent-bank, without even seeing the Valuation Report or the Original Title Deeds, with a view to buy the aforesaid property, wherein the petitioner has been staying with his family.

8. It is submitted that while rejecting the settlement proposals, the bank is not taking into account the *bona fide* intent of the petitioner. It is submitted that the respondent-bank is not willing to talk and is asking the petitioner to purchase the flat at the price decided by it, without any negotiation. Thus, it is submitted that the action of the respondent-bank is not proper, as no Valuation Report has been provided to the petitioner to know the actual valuation of the property, as a buyer.

9. Per contra, Mr. Ravi Gupta, learned Senior counsel appearing for the

respondent-bank has handed over a copy of judgment dated 03rd January, 2024 passed in *W.P.(C) 15547/2023*, wherein the Court had taken into account the fact that the petitioner herein had already approached the Debt Recovery Tribunal ("DRT") in *SA No. 129/2022*, re-numbered as *TSA No. 189/2022*.

10. The aforesaid judgment is taken on record.

11. Learned Senior Counsel further submits that pursuant to the aforesaid judgment, the learned DRT has already decided the appeal filed on behalf of the petitioner herein by order dated 06th April, 2024. He draws the attention of this Court to the said order, to submit that the occupation of the petitioner is unauthorised.

12. Learned Senior Counsel for respondent has shown the Auction Notice of the year 2022 to this Court, wherein the Reserve Price of the property in question has been put as ₹ 1,26,00,000/- in the year 2022. He, thus, submits that on the basis of deposit of a meagre amount of ₹ 40,00,000/-, the bank cannot be compelled to accept the offer of the petitioner.

13. He further submits that the possession of the property in question is to be taken by the bank on 21st May, 2024 in terms of the possession notice issued under the SARFEASI Act.

14. He further submits that the petitioner had visited the respondent-bank day before yesterday, i.e., on 15th May, 2024 and had offered a total amount of ₹ 50,00,000/- for purchase of the said flat. He submits that the said offer was rejected by the bank, as the said amount was an under-valued amount, as the Reserve Price of the said flat is to the tune of ₹ 1,26,00,000/-, as valued in the year 2022.

15. At this stage, learned counsel for the petitioner submits that the

petitioner is not an unauthorised occupant and has been staying in the flat along with his family as a tenant. He further submits that the petitioner is ready to pay an enhanced amount to the respondent-bank for purchase of the flat in question.

16. I have heard learned counsel for the parties and have perused the record.

17. At the outset, this Court notes that the learned DRT vide order dated 06th April, 2024 has already rejected the contentions of the petitioner in the appeal filed by the petitioner. Relevant portions of the said order dated 06th April, 2024, as relied upon by the learned Senior Counsel for the respondent-bank, reads as under:

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> *5. The main contention of the Ld. counsel of the applicant is that the applicant is the tenant of the subject property and the tenancy was created much before the creation of the mortgage in favour of the respondent bank. It is submitted that the lease was executed by the lesser on 01.10.2012 for a period of 2 years through a unregistered lease deed. After expiry of the lease period the applicant became the lessee on month to month basis and therefore his right cannot be terminated as the mortgage created in favour of the respondent bank is much after the creation of the lease in favour of the applicant. On the other hand the respondent bank in his reply at para no.24 has submitted that Mr. Panchanan Pranamik, the father of the applicant was in possession of the property at the time of creation of the mortgage and was residing in the property in question. It is submitted that Mr. Panchanan Pranamik had signed and delivered to the respondent bank a letter dated 06.11.2019 wherein he stated his no objection for mortgaging the property In question being ground floor, House no.38, Pocket-52, Chitranjan Park, New Delhi. It is submitted that the applicant is not the lessee of the subject property, therefore, he has no locus standi to file the present SA claiming himself to be the lessee of the property. From perusal of the pleadings it is clear that the main contention between the parties is whether the appellant is the lessee of the property or not. The applicant claims that the applicant is*

the tenant of the subject property bay way of unregistered lease deed. Whereas the respondent bank claims that at the time of creation of the mortgage, the father of the applicant was in occupation of the subject property. Therefore, it is the burden of applicant to prove that the applicant is the lessee/tenant of the subject property. To prove his tenancy rights, the applicant has filed the copy of the lease deed dated 01.10.2012. From perusal of the lease deed it is clear that the lease deed is an unregistered document. It is also clear that as per para no.4 of the lease deed the lease is granted for period of two years only commencing from 01.10.2012 and the rent will be increased by 10% after completion of one year as mutually agreed. Therefore, this lease deed has been created for a period of two years. As per provisions contained in the Section 107 of the Transfer of Property Act a lease of immovable property from year to year or for any term exceeding one year or reserving a year1y rent can be made only by a registered instrument. Therefore, it is clear that a lease for a period exceeding one year has to be registered. If the lease for a period of more than one year has not been registered, the same cannot be read in evidence and cannot create any right in favour of the applicant. It is settled law that a document which is compulsory to be registered has not been registered shall not be read into evidence for creating any right in favour of the party. The unregistered document cannot be basis of any right. Therefore, this unregistered lease deed cannot be read into evidence and on the basis of this lease deed it cannot be deemed that applicant is the lessee of the subject property.

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7. The Ld. counsel of the applicant has also filed the bank statement of the applicant which is annexed as Annexure A-6, paper no.49 to 67. I have gone through the bank statement of the applicant. From perusal of the statement it is clear that on 03.10.2012, 10.10.2012, 09.11.2012, 15.11.2012, 10.12.2012, 09.01.2013, 08.02.2013, 09.03.2013 payments has been made to Ms. Vijay Kalia. But there is no mention in the statement that the amount has been paid for what purpose. Therefore, it cannot be said that these payments has been made for rent of the subject property. From perusal of the bank statement it is clear that the applicant has submitted the bank statement of the ICICI Bank from 01.04.2012 to 29.03.2013. The applicant has not filed the statement of the account after 29.03.2013. The applicant has also filed the statement of account from 05.01.2021 to 31.03.2021. During the period of 29.03.2013 to 04.01.2021 no statement of account has been filed. From perusal of the statement of account i.e. from 20.01.2021 there is no

entry regarding payment of any amount to Ms.Vijay Kalia. Therefore, from the statement of account it is not clear that the applicant has paid any rent to the owner of the subject property and the applicant is the tenant for month to month basis. Therefore, there is no evidence to establish that applicant is the lessee of the subject property. Therefore, the applicant cannot claim any right over the subject property.

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10. The Ld. counsel of the applicant has submitted that vide order dated 25.03.2022 this Tribunal has directed the applicant to deposit Rs.40 Lacs with the respondent bank and the applicant has deposited Rs.40 Lacs and therefore, the respondent bank may be directed to sell the property in favour of the applicant. It is submitted that the applicant is ready to purchase the subject property after paying the fair value of the subject property. In this regard I have gone through the order passed by this Tribunal on 25.03.2022. The relevant portion of the order dated 25.03.2022 is as below:-

> *"7. In the present matter, since the S.applicant is ready to settle the matter and in order to show his bona fide the applicant is ready to deposit with the respondent bank a sum of Rs. 40.00 Lakhs in the aforesaid manner. Keeping in view of the past/present Covid-19 situation in the entire country including Delhi and without going into the merit it would not be appropriate to dispossess the S.applicant from the property in question. Thus, I hereby restrained the respondent bank/ court receiver from taking physical possession of the property in question subject to deposit by the S.applicant with the respondent bank a sum of Rs.20.00 Lakhs by today itself i.e. 25.03.2022 and another amount of Rs.20.00 lakhs by 30.03.2022. Thereafter, the S.appllcant shall approach the respondent FI for settling the matter within one month. The amount so deposited by the S.applicant shall be kept in no lien interest bearing account by the respondent bank till further order."*

11. From perusal of the above order it is clear that no right has been created by this Tribunal in favour of the applicant. The Tribunal only directed the applicant to approach the respondent bank for a settlement. As per the statement of the applicant the settlement has not been reached between the applicant and the respondent bank. This Tribunal has no right or jurisdiction to direct the respondent bank to sell the property on any specific tersm. In a recent judgement CELIR

LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. the Hon'ble Supreme Court in para no. 104 has summarized the position of law and has held that :
"104. The proposition of law is as discernible from the aforesaid decisions is that equity cannot supplant the law. Equity has to follow law, if the law is clear and unambiguous."
Therefore, on the basis of the equity this Tribunal cannot direct the respondent bank to act against the specific provisions of the SARFAESI Act and sell the property in favour of the applicant. The applicant is neither the borrower nor guarantor of the subject property, therefore, the applicant cannot claim any right over the subject property by paying any specific amount. If the applicant wants to purchase the subject property, the applicant may participate in the auction as and when the auction is scheduled by the respondent bank as per provisions contained in the SARFAESI Act/Rules. Therefore, no direction can be given to the respondent bank merely because the applicant has deposited Rs.40 Lacs with the respondent bank in a no lien account. Therefore, on this ground the SA of the applicant cannot be allowed.

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18. This Court also takes note of the judgment dated 03rd January, 2024 passed by the Division Bench of this Court in *W.P.(C) 15547/2023*, wherein it has been stated as follows:

*"1. The present writ petition has been filed challenging the order dated 25th March, 2022, passed by the learned DRT-1, New Delhi in SA No. 129/2022, titled as "**Sankhajit Pramanik versus Kotak Mahindra Bank Limited & Ors"**, whereby the Petitioner bank was restrained from taking physical possession of subject property being Ground Floor, No. 38, Pocket No. 52, Chittaranjan Park, New Delhi. The Petitioner further seeks directions to the Learned DRT-II to take up the application seeking recall/modification of the order dated 25th March, 2022, at the earliest.*

2. Learned senior counsel for the Petitioner states that the impugned order was passed on the basis of the submission made by Respondent No. 1 that it is ready and willing to settle the dispute between the parties and is further willing to purchase the property in question.

3. Learned senior counsel for the Petitioner states that though the Respondent No. 1 deposited the amount of INR 40 lakhs with the Petitioner Bank, yet no further efforts have been made by the

Respondent No. 1 to settle the matter with the Petitioner Bank and rather the Respondent No. 1 is enjoying the stay granted by the learned Tribunal by depositing a meagre amount of INR 40 lakhs when the outstanding dues in the loan account of Principal Borrower i.e., Respondent No. 3 is in excess of INR 25 crores. It is the case of the Petitioner that the Respondent No. 1 is also not paying the rental of the subject property since long to the property owner i.e., Respondent No. 2.

4. Learned senior counsel for the Petitioner states that the Petitioner Bank made efforts to auction the property in question by issuance of Sale Notice dated 20th April, 2022, under the provisions of SARFAESI Act read with Rules 8 and 9 of Security Interest (Enforcement) Rules, however, the Respondent No. 1 failed to participate in the same. Also no bids were received by the Petitioner Bank as the physical possession of the subject property has not been taken over by the Petitioner Bank.

5. Learned senior counsel for the Petitioner states that the Borrowers/Mortgagors/Guarantors jointly and severally have failed to make repayment of the amounts due and outstanding under the financial facilities granted by the Petitioner Bank and accordingly, the loan accounts of Respondent No. 3 were classified as Non-Performing Assets (NPA) on 29th January, 2019.

6. Learned senior counsel for the Petitioner states that on 11th April, 2022 the Petitioner Bank had a meeting with the Respondent No. 1 and he was asked to give his offer for purchasing the subject property in terms of the submissions made by him before the learned DRT-I, New Delhi. However, he failed to act in accordance with the offer given before the Learned DRT-I, Delhi and also stopped taking the calls of the Petitioner Bank.

7. Learned counsel for Respondent No. 1, who appears on advance notice, states that the said Respondent is a lessee of the property in question, whose lease has not been determined till date. He also states that he has made an offer to purchase the property in question, but the deal could not fructify as the bank is not in possession of the original title deeds.

8. Learned senior counsel for the Petitioner states that it is not Respondent No. 1 but it is his father who was a tenant in the suit property.

9. Keeping in view the aforesaid, this Court disposes of the present writ petition by preponing the date of hearing of SA No. 129/2022 *(now numbered as TSA No. 189/2022) to 22nd January, 2024 for directions. The learned DRT-II is directed to dispose of the main appeal itself as expeditiously as possible; preferably within two months of receipt of this order. The rights and contentions of all the parties are left open.*

10. List the matter for compliance on 08th April, 2024."

19. Perusal of the aforesaid categorically shows that the respondent-bank is proceeding against the flat in question under the SARFEASI Act.

20. The law in this regard is very clear that a civil court will not have any jurisdiction with respect to any proceedings which are being undertaken under the SARFEASI Act. Thus, the present petition, as such, would not be maintainable before this Court.

21. This Court further notes the fact that the contentions of the petitioner herein were earlier considered by the Division Bench of this Court in *W.P.(C) 15547/2023*, wherein the Division Bench had categorically directed the learned DRT to take up the appeal filed by the petitioner.

22. Thus, pursuant to the directions passed by the learned Division Bench of this Court, the learned DRT by its judgment dated 06th April, 2024, has already dismissed the appeal of the petitioner.

23. However, considering the submissions made by learned counsel for the petitioner that the petitioner is willing to pay an enhanced amount to the respondent-bank, this Court directs that the petitioner, along with his authorised representative, shall be heard by the concerned officials of the bank tomorrow, i.e., 18th May, 2024, which is a working Saturday, being a third Saturday of the month.

24. The petitioner and his authorised representative shall visit the respondent-bank at 11:00 A.M. on 18th May, 2024 and meet the concerned

bank officials. The bank officials are directed to give a hearing to the petitioner and his authorised representative and consider the case of the petitioner, as per the policy of the bank.

25. It is clarified that this Court has not interfered in any proceedings, which the bank is undertaking under the SARFEASI Act.

26. It is further clarified that this Court has not stayed either the proceedings under the SARFEASI Act, or any action of the bank under the SARFEASI Act, including taking possession of the flat in question.

27. With the aforesaid directions, the present petition is disposed of, along with the pending applications.

MINI PUSHKARNA, J

MAY 17, 2024/*MR*