



\$~33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 7149/2024****NASEEM BANO**

..... Petitioner

Through: Mrs. Shimpy Arman Sharma with Mr.
Rahul Gupta, Advocates

versus

KOTAK MAHINDRA BANK LTD.**AND ORS.**

..... Respondents

Through: Mr. Ravi Gupta, Senior Advocate
with Mr. Mahip Datta Parashar, Ms.
Sanya Lamba and Ms. Muskan
Mehra, Advocates for R-1
Ms. Avni Singh, Advocate for R-
2/GNCTD

%

Date of Decision: 17th May, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ : (ORAL)****CM APPL. 29802/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 7149/2024

1. Present writ petition has been filed *inter alia* seeking expeditious disposal of Securitization Application bearing no. TSA/872/2022, pending adjudication before Debts Recovery Tribunal – II, Delhi and restraining the Court Receiver from taking physical possession of the property i.e., first floor of the property bearing plot no. 17 admeasuring 200 sq. yds. in Block



No. B-4, in the layout plan of Safdarjung Development Residential Scheme ('subject property') until the disposal of TSA/872/2022. The Petitioner also seeks a direction to the Respondent bank from initiating any coercive action against the subject property until the disposal of TSA/872/2022.

Brief Facts of the present petition

2. The TSA/872/2022 is an application filed under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'), by the Petitioner seeking a prayer to set aside orders dated 05th March, 2021, 20th March, 2022 and 23rd May, 2022 passed by the Chief Metropolitan Magistrate ('CMM') appointing a Receiver for taking over possession of the subject property.

3. The said application was listed before the Tribunal for adjudicating interim relief as prayed by the Petitioner to restrain the Respondent Bank/Court Receiver from taking physical possession of the subject property. The Tribunal *vide* order dated 08th July, 2022 rejected the prayer of petitioner for interim relief as the Petitioner was unable to satisfy the Tribunal that there exists any illegality or irregularity in the measures taken by the Respondent Bank and the Court Receiver. Feeling aggrieved by the order of the Tribunal, Petitioner filed an appeal bearing no. Misc. Appeal No. 161/2022 before Debt Recovery Appellate Tribunal ('DRAT'), however, the Petitioner couldn't satisfy the statutory condition of pre-deposit as per section 18 of SARFAESI Act and therefore, DRAT disposed of the appeal on 30th August, 2022 with a direction to the Respondent Bank to give a fifteen days advance notice before taking the physical possession of the subject property.



4. The Respondent bank thereafter again approached the CMM to extend the time granted to the Court Receiver for taking over possession. The said application was allowed by the CMM *vide* order dated 14th March, 2024 and the Receiver has been granted extended time to execute the order dated 05th March, 2021. In furtherance of the said extension, the Court Receiver issued a notice to take over physical possession of the subject property on 20.05.2024.

5. Feeling aggrieved, the Petitioner filed an application before the DRT being I.A. No. 2440/2024 for amendment of TSA/872/2022, seeking relief(s) against the order of CMM dated 14th March, 2024 and notice issued by the Court Receiver. Notice in this application was issued on 08th May, 2024 and the matter is listed before the DRT today i.e., 17th May, 2024.

6. Learned counsel for the Petitioner states that though the I.A. No. 2440/2024 was filed before the DRT last week, yet the Tribunal failed to grant any protection and simplicitor issued notice for 17th May, 2024. She states that the Petitioner is seeking protection against dispossession pending the final disposal of TSA/872/2022.

7. In reply, learned senior counsel for the Respondent bank states that in view of the fact that I.A. No. 2440/2024 is listed for hearing today before DRT, the present writ petition ought not to be entertained. He further states that the Petitioner's earlier application seeking stay was dismissed on merits by DRT *vide* order dated 08th July, 2022 and the present writ petition is an abuse of process. He states that another writ petition filed by the brother of the Petitioner being W.P.(C) No. 6899/2024 pertaining to different floors in the same immovable property already stands dismissed by this Court *vide* order dated 14th May, 2024.



8. Having heard the learned counsel for the parties we are of the view that the present writ petition is not maintainable. The Petitioner's earlier application seeking interim relief was dismissed *vide* order dated 08th July, 2022, which has attained finality. The DRT in that order recorded that all the measures under the SARFAESI Act have been taken by the Respondent bank and there is no illegality in the proceedings initiated for taking physical possession. Even otherwise, on the same cause of action as pleaded in this writ petition, the Petitioner has already approached the DRT by way of I.A. No. 2440/2024, which is listed today and therefore, the relief sought in the present petition for issuing directions to DRT for expeditious hearing is infructuous.

9. Accordingly, the present petition along with pending applications stands dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 17, 2024/hp/AKT/MG