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

+ **W.P.(C) 7388/2024 & CM APPL.30891/2024**

SURENDRA MOHAN & ANR.

..... Petitioners

Through: Mr.Kumar Vaibhaw, Advocate with
Ms.Somaya Gupta, Advocate.

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr.Anmol Panwar, Advocate with
Mr.Devendra Panwar, Advocate.

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Date of Decision: 22nd May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPLs.30892-30893/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the applications stand disposed of.

W.P.(C) 7388/2024 & CM APPL.30891/2024

3. Present petition has been filed challenging the order dated 16th August, 2021 passed by DRT-I, Delhi in O.A. No.433/2021 and all consequential proceedings arising out of O.A. No.433 of 2021 [re-numbered as TA 461/2023] pending before DRT-II, New Delhi *qua* Petitioners herein (Defendant Nos. 4 and 5 therein) thereby declaring property bearing No.504, situated at Arihant Sidharth, CGHS Ltd, Plot No: 3B, Sector 11, New Delhi-110075 free of encumbrance, charges, liens, attachments, claims, and other liabilities in relation to O.A. No.433/2021.

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4. Learned counsel for the Petitioner states that Petitioner No. 2 was allotted one flat bearing No.504, situated at Arihant Sidharth, CGHS Ltd, Plot No: 3B, Sector 11, New Delhi-110075 ("**the Flat**") on 31st January, 2012.

5. He states that since Petitioner No. 2 is settled in London, Petitioner No. 2 executed a General Power of Attorney dated 21st February, 2012 in the name of Petitioner No.1 to manage, control and supervise the affairs of the said flat.

6. He states that due to the ill-health of Petitioner no. 2, it was decided to sell the flat. He states that Ravi Gehlot and Kiran Gehlot had shown interest through a broker and had given a token amount of Rs. 1 Lakh by cheque to the Petitioners. He states that photocopy of documents of the Flat along with Aadhaar card, PAN Card etc of the Petitioners were shared on the pretext of the aforesaid persons availing loan. He states that subsequently, it was informed to the Petitioners that the Gehlots would not be able to purchase the said flat and therefore, the Cheque of Rs. 1 Lac was given back.

7. He further states that vide Sale Deed dated 19th July, 2018, the Flat was sold by the Petitioners to Mr. Sanjay Rustagi and Ms Kanchan Rustagi for a sale consideration of Rs.1,10,00,000/- .

8. He states that in 2018, a Loan Application for finance against Mortgage of immovable property was submitted to the Respondent Bank by M/s Harpreet Impex- a partnership firm for a loan to the tune of Rs. 1.35 crores whereby Petitioner No. 2 was shown as the guarantor to such loan. He further states that the Flat belonging to Petitioner No.2 was mortgaged against the loan sanctioned by the Respondent bank. He also states that on 22nd March, 2018, Som Nath Patial, Chief Manager of the Respondent Bank



at Kalkaji, sanctioned a loan Overdraft facility of Rs. 1.30 Crores to M/s Harpreet Impex against equitable mortgage property.

9. He states that on 15th January, 2020, the Petitioner No.1 was shocked to receive a Letter dated 8th January, 2020 addressed to “*Surender Mohan*” from the Respondent Bank seeking alternate property in relation to term loan to the tune of Rs. 1,30,00,000/- availed by one “*M/s Harpreet Impex through its partners Deepak Kumar Anand, Preeti Bhalla and Surender Mohan.*” It was further stated that Plot No: 3B, Sector 11, New Delhi-110075 “*in the name of Megna Mohan and Surendra Mohan*” had been mortgaged.

10. He states that Petitioner No. 1 filed a police Complaint dated 18th January, 2020 before Kalkaji Police Station explaining the entire facts and circumstances of the case and requested for registration of FIR against unknown persons. He further states that despite being aware of the facts of the matter and also the Complaint dated 18th January, 2020 filed before Police Station Kalkaji, the Respondent Bank issued a Notice dated 30th January, 2020 under Section 13(2) of the SARFAESI Act to M/s Harpreet Impex, Deepak Anand, Preeti Bhalla and both the Petitioners whereby the Bank recalled the overdraft facility and called upon the noticees therein to pay the amount due to the Bank.

11. He contends that the proceeding filed by the Respondent-Bank constitutes an abuse of the process of Court which should be interfered with in writ jurisdiction.

12. However, this Court is of the view that the matter involves disputed questions of fact and all the contentions as well as submissions advanced by the Petitioner should be raised before the DRT.

13. The Supreme Court in ***PHR Invent Educational Society Vs. UCO***



Bank and Ors., 2024 SCC OnLine SC 528 has recently again reiterated that the High Courts should not entertain petitions arising out of DRT Act and SARFAESI Act as effective alternative remedies are available under the said Acts. The relevant portion of the said judgment is reproduced herein below:-

“33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of Satyawati Tondon (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

“55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

34. In the result, we pass the following order:

- (i) The appeal is allowed;*
- (ii) The impugned order dated 4th February 2022 passed by the High Court in Writ Petition No. 5275 of 2021 is quashed and set aside; and*
- (iii) Writ Petition No. 5275 of 2021 is dismissed with costs quantified at Rs. 1,00,000/- imposed upon the Borrower.”*

14. In view of the aforesaid, the present writ petition along with application is dismissed with liberty to the Petitioner to agitate all its contentions and submissions before the DRT in accordance with law.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 22, 2024
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