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

+ W.P.(C) 8053/2024 & CM APPL. 33173-74/2024

VEERESH KUMAR AND ANR

..... Petitioners

Through: Mr. Ranjit Sharma and
Mr. P. Chandra, Advocates.

versus

IIFL HOME FINANCE LTD

..... Respondent

Through: Mr. Mukul Bhimani, Advocate
(*through VC*)

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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30.05.2024

1. Present writ petition has been filed challenging the order dated 18th March, 2024 passed by the Debts Recovery Tribunal-II, New Delhi (“DRT”) in IA No. 1619/2024 in SA No. 241/2023, and the auction sale held on 18th March, 2024 vide notice dated 28th February, 2024. The Petitioners further prays for issuance of directions to the Respondent-Bank to reschedule the outstanding loan amount and handover possession of the residential flat bearing no. B-55, UGF, Gali No. 5, B-block, Sanjay Enclave, Uttam Nagar, New Delhi- 59 to the Petitioners.

2. Learned counsel for the Petitioners states that the sale notice dated 28th February, 2024 was served upon the Petitioners on 4th March, 2024 and hence the fifteen days’ notice was not served to the Petitioners in accordance with Security Interest (Enforcement) Rules, 2002.



3. He further states that the Respondent-Bank received the entire arrears of dues from the Petitioners as per agreed terms determined in the month of September 2022 by 21st January, 2023, and the loan account of the Petitioners became regular thereafter. He reiterates that despite the fact that no instalment was overdue, the Tribunal illegally directed the Petitioners to deposit Rs.2.62 lacs, on account of which, the Petitioners have been rendered homeless.

4. He contends that the Respondent-Bank cannot enforce coercive measures unilaterally in breach of the agreement or take over possession of the subject property even though no instalment is overdue.

5. *Per contra*, learned counsel for the Respondent, who appears on advance notice, states that the present writ petition is not maintainable as the Petitioners have an alternative efficacious remedy of filing an appeal before the DRAT.

6. Since, the present writ petition has been filed without exhausting the alternative efficacious remedy, the present writ petition is not maintainable. It is pertinent to mention that the Supreme Court in ***PHR Invent Educational Society vs. UCO Bank and Ors.*** 2024 SCC OnLine SC 528 has recently 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.”

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

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 30, 2024

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