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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.CAS(C) 1073/2019, CM APPL. 52352/2019 & CM
APPL. 563/2020
ANITA GOELPetitioner

Through: Mr. Sunil Dutt Dixit, Adv.

versus

M/S GALORE PACKAGING INDIA PVT LTD THR ITS
DIRECTOR(S) & ORSRespondents

Through: Ms. Rekha Rustagi, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
23.10.2024

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1. The petitioner is seeking initiation of the contempt proceedings against the respondents for wilful disobedience of the interim directions of the learned Single Judge of this Court contained in the order dated 06.11.2015 in CS (OS) 3147/2015.

2. Briefly stated, the petitioner, being the plaintiff, instituted a suit for recovery against the respondents/defendants including the relief for *pendente lite* interest and future interest, and on moving of an application under Order XXXVIII Rule 5 Code of Civil Procedure [‘CPC’], an interim order was passed to the following effect:

“Till further orders, the defendants are restrained from disposing off the properties mentioned at serial Nos.(a), (d) & (e) in para 3 of the application, i.e. (a) F-614, Bhiwadi Industrial Area, District Alwar, Rajasthan, (d) H-4/16, Krishna Nagar, Delhi-110051, and (e) D-4, IInd Floor, Gulmohar Park, New Delhi.”

3. It is the case of the petitioner that subsequently after enhancement of the pecuniary jurisdiction of the District Courts, the suit was transferred to the court of learned District Judge, Tis Hazari, West District, *vide* order dated 15.01.2016 which was given a new



suit number i.e. CS No.612110/16 and was fixed for *ex-parte* final arguments on 03.02.2020. It is stated that the respondents/defendants have not been appearing in the matter since 13.05.2019, and therefore, he made enquiries about their whereabouts and only on 18.11.2019 it came to his notice that the respondent no.1/contemnor had sold the property no.F-614, Bhiwadi Industrial Area, District Alwar, Rajasthan through respondent/contemnor no.2 *vide* registered sale deed dated 12.09.2019 and some construction activities were being undertaken thereat.

4. Likewise, the petitioner/plaintiff came to know that the property bearing no.H-4/16, Krishan Nagar, Delhi had also been sold by the contemnor no.1 *vide* registered sale deed dated 10.10.2016.

5. Learned counsel for the petitioner, alluding to the sale deeds in respect of the aforesaid two properties has urged that a false declaration was made by the respondent no.2/contemnor to the effect that the said properties were free from all sorts of encumbrances, burden, sale, decree, mortgage or the order of the Court etc. Hence the present petition.

6. Suffice to state that the respondent nos.2&3/contemnors have filed a reply-cum-affidavit and their plea is that they had not voluntarily entered into the sale of the two properties as mentioned above and rather the same were disposed of pursuant to the proceedings initiated by the secured creditor/bank under the SARFAESI Act, 2002¹.

7. Having heard the learned counsel for the parties and on perusal of the record, it appears that no reply was filed on behalf of the respondents to the application under Order XXXVIII Rule 5 CPC. Indeed, an interim order has been passed directing the respondents not



to dispose of the property in question, however, the learned counsel for the respondents is able to demonstrate that there was no wilful or deliberate disobedience on the part of the respondents inasmuch as the property at Krishna Nagar, Delhi was mortgaged by the respondent no.2/defendant as guarantor/director with M/s Bajaj Finance Limited for a loan taken by M/s Unilite Plastic Industries Private Limited on 31.01.2013, which loan was taken over by CITI Bank *vide* sanction letter dated 16.05.2014 and it was pointed out that bank account of M/s Unilite Plastic Industries Private Limited was classified as NPA on 30.06.2015 and a demand notice by its main banker/secured Creditor viz. Karnataka Bank Ltd. dated 02.11.2015 was received under Section 13(2) of the SARFAESI Act, 2002, and accordingly, the sale of the property at Krishan Nagar was effected and the entire amount due to the CITI Bank was paid by executing the sale deed dated 10.10.2016.

8. Insofar as the property at Bhiwadi Industrial Area is concerned, it is also brought out that the same was mortgaged by the respondent no.1 as collateral security to secure an overdraft limit granted by the Karnataka Bank Ltd.; and that on 13.10.2012, a fire broke out in the factory of the respondents at Bhiwadi and since there was a delay in getting the amount of insurance claim, the account of the company was declared as NPA and a demand notice dated 27.05.2013 under Section 13(2) of the SARFAESI Act, 2002 was served and consequently the physical possession of the property was taken over by the Karnataka Bank Ltd. on 21.08.2013.

9. It is also pointed out that Karnataka Bank Ltd. put the property to public auction on 13.10.2015 *vide* sale notice dated 01.09.2015.

¹ Securitisation and Reconstruction of financial Assets and Enforcement of Securities Interest Act



However, the sale was put on hold since in the interregnum, not only the insurance claim was received on account of the fire in the factory on 29.06.2016, but also a demand notice dated 17.08.2015 for a sum of ₹2,46,75,219/- along with the interest had been served by the Assistant Commercial Law Tax Officer.

10. It is submitted that after entering into negotiation with the Assistant Commercial Law Tax Officer, the sale of the property was effected under compulsion and for settlement of the statutory dues.

11. Be that as it may, it was also pointed out by the learned counsel for the respondents that the third property, which is covered by the impugned order dated 06.11.2015 is lying intact and it is sufficient to cover up the liabilities of the petitioner, if any, proven in accordance with law, which fact has not been disputed by the learned counsel for the petitioner.

12. In view of the foregoing discussions, I find that it is difficult to discern that there has been any wilful, deliberate or contumacious disobedience on the part of the respondents in complying with the directions of this Court.

13. Before closing down the curtains on this matter, learned counsel for the respondents has submitted at the bar that they would seek appropriate permission from the Court in case they wish to sell or dispose or create third party rights in the property referred hereinabove.

14. Accordingly, the present petition is dismissed.

DHARMESH SHARMA, J.

OCTOBER 23, 2024/Ch/Sa