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

+ **W.P.(C) 15547/2023 & CM APPL. 62296/2023**

KOTAK MAHINDRA BANK LIMITED

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Advocate with Mr.
Mahip Datta Parasha, Ms. Muskaan Mehra
and Ms. Sanya Lamba, Advocates

versus

SHANKHAJIT PARMANIK AND ORS

..... Respondents

Through: Mr. Avneesh Garg, Advocate

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Date of Decision: 03rd January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

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.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 3, 2024/rhc