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

\+ CONT.CAS(C) 1811/2023

SUKOMAL ALAG & ANR. ..... Petitioners

Through: Mr. Arjun Syal, Adv. with Mr. Shreyan Das and Mr. Rohit Kumar, Advs. (Through VC)

versus

S S RATHORE & ORS. ..... Respondents

Through: Mr. Anupam Singh & mr.Sushmit Mishra, Advs.
M: 9654926809
Email: anupamsingh@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

<u>O R D E R</u>

% **22.02.2024**

1. The present petition has been filed alleging willful disobedience of the judgment dated 13th October, 2023 passed by learned District Judge, Patiala House Court in *OMP (I) (Comm.) No. 67/2023*.

2. By the aforesaid judgment, it had been directed that subject to deposit of an amount of Rs. 1,85,00,000/- with the respondent- Kotak Mahindra Bank within one week, the respondent-Bank was directed not to take any coercive steps against the petitioner.

3. Mr. Arjun Syal, learned counsel appearing for the petitioner submits that despite the aforesaid judgment, the respondent-Bank has sent an E-mail to the petitioners dated 07th November, 2023, intimating that an installment

of Rs. 2,26,527/- was due on the loan account of the petitioners. He further submits that subsequently a lien was marked by the bank on the account of the petitioners. Thus, he submits that the respondents are in willful disobedience of the aforesaid judgment dated 13th October, 2023.

4. It is further submitted that notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ("SARFAESI") Act had also been issued to the petitioner despite the aforesaid judgment.

5. Per contra, learned counsel appearing for the respondents submits that the E-mail sent to the petitioners was a computer generated automated E-mail, which was only in the nature of a reminder to the petitioners with regard to the instalments due and payable by the petitioners. He further submits that the lien that was marked on the petitioners' account has since been removed.

6. He further submits that the amount of money in the petitioners' account is only to the extent of Rs. 12,786.97/- . The aforesaid judgment dated 13th October, 2023 was operational only for a period of 90 days or till the arbitration proceedings commenced, whichever was earlier. He submits that the arbitration proceedings have since commenced and an arbitrator has already been appointed.

7. He further submits that the SARFAESI notice which the petitioner is relying upon is dated 17th August, 2023, which is much prior to the judgment dated 13th October, 2023 passed as aforesaid.

8. Having heard learned counsels for the parties, this Court at the outset notes the relevant portions of the judgment dated 13th October, 2023, which reads as under:

"xxx xxx xxx

12. As discussed above, since the stand of the respondent with regard to foreclose charges was not consistent and further that the petitioners are ready and willing to deposit an amount of Rs. 1,85,00,000/-, out of the amount demanded in Loan Recall notice which as rounded figure is Rs. 1,88,00,000/-, a prima facie case is made out and the balance of convenience also lies in the favour of the petitioners as after depositing the aforesaid amount pressing of loan recall notice and provisions of coercive methods of recovery would cause harm to the petitioners, therefore, subject to depositing an amount of Rs. 1,85,00,000/- (Rupees One Crore Eighty Five Lacs Only) with the respondent bank within a week, the respondent is directed not to take any coercive step against the petitioners. It is made clear that this order shall remain in force for a period of 90 days from the date of order or the date when the Arbitration proceedings commenced, whichever is earlier.

xxx xxx xxx"

9. Perusal of the aforesaid clearly shows that the respondents were restrained from taking any coercive methods of recovery against the petitioners, subject to deposit of an amount of Rs. 1,85,00,000/- by the petitioners with the respondent-Bank within a week. Further, the order was categorical to the effect that the same shall remain enforced only for a period of 90 days from the date of the order or the date when the arbitration proceedings commenced, whichever is earlier.

10. This Court records the statement made by learned counsel for the respondents that the arbitration proceedings have since commenced and arbitrator has already been appointed.

11. This Court also notes the E-mail dated 07th November, 2023 issued by the respondent-Bank to the petitioners, which reads as under:

"Director
SaBee Finanz Pvt. Ltd.

93, Zone-H-4/5,Pitampura

New Delhi:110034 / INDIA

Tel : +91 11 27831952, 27831953,
27832074, 42860130
Fax :+91 11 27832762
Mbl : +919810200130
Mail : pkr@pkronline.net Mail : gurdayalsingh@sabeefinanz.com
Web: pkronline.net

From: bankalerts@kotak.com
Sent: Tue, 7 Nov 2023 17:36:10 GMT+0530
To: PKR@PKRONLINE.NET
Subject: Installment Due Alert

Dear Customer,

We would like to inform you that an Installment of Rs 226527 on your loan A/c no LAP18547059 is due on 10-NOV-2023. Kindly ensure sufficient funds in your account.

For any queries or clarification, please call our customer service number 18602662666 (Local call rates apply) between 9:00 am to 7:00 pm from Monday to Saturday, excluding holidays or Click here to get in touch with us.

Thank you for banking with us.

This e-intimation was electronically generated. Please do not reply to this e-mail

Warm regards,

Team Kotak Mahindra Bank"

12. Perusal of the aforesaid clearly shows that the said E-mail was issued from the E-mail address, i.e., bankalerts@kotak.com. Thus, the Court records the statement made by learned counsel for the respondent that the aforesaid E-mail is only a computer generated automated E-mail, which is generated automatically by the system of the bank, wherein general E-mails are sent to all the customers of the bank thereby reminding them of the

installments of loan that are due and payable by them. Thus, issuance of the aforesaid E-mail dated 07th November, 2023, cannot be said to be in the nature of coercive steps against the petitioner.

13. This Court also notes the fact that the lien that was marked upon the account of the petitioners, which had a deposit of an amount of only Rs. 12,786.97/-, has since been removed.

14. Considering the aforesaid facts and circumstances, this Court is of the view that no contempt has been committed by the respondents.

15. At this stage, learned counsel appearing for the petitioners submits that he may be granted liberty to approach this Court, in case there are any violations in future.

16. Needless to state, in case of any grievance, the petitioners always have the liberty to avail remedies, in accordance with law.

17. Accordingly, the present petition is dismissed.

MINI PUSHKARNA, J

FEBRUARY 22, 2024/kr