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

% **Date of decision: 22nd August, 2024**

+ **W.P.(C) 11544/2024**

VISHWANATHA ESWARANPetitioner

Through: Ms.Eshna Kumar and Mr.
Lakshmi Kant Srivastava,
Advocates.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Miamansak Bhardwaj, Sr.
panel counsel with Mr.Amit
Acharya, GP with Mr.Sunny,
Ms.Vidya Mishra and Mr
.Pradeep Baisoya, Advocates
for R-1.

Mr. Sanjeev Singh, Ms.Taniya
Bansal, Mr. Mudrakshi, Ms.
Meenakshi S, Ms.Sandeepa
Bhattacharjee and Mr.Shivam
for Respondent TCHFL/R-3.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 47869/2024 – EXMP.

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner is invoking writ jurisdiction of this Court under Article 226 of the Constitution of India seeking issuance of directions in the nature of prohibition to restrain respondent No.3/Tata Capital Housing Finance Limited from taking any adverse action against the



petitioner on the non-payment of the due EMIs¹ for the subsequent months.

4. Learned counsel for the respondent No.3 is present on the advance notice and he has challenged the maintainability of the present writ petition. He has referred to decisions in **Shelly Lal v. UOI**²; **Upendra Choudhury v. Bulandshahar Development Authority**³; and **South Indian Bank Ltd. v. Naveen Mathew Philip**⁴

5. Shorn of unnecessary details, the petitioner took a flat in the project to be brought out by respondent No.4/Oasis Realtech Private Limited (Builder) and home loan/finances were evidently provided by the respondent No.3 in terms of subvention scheme under Tripartite Agreement dated 15.03.2016. It appears that for the non-payment of the outstanding dues due to the respondent No.3, the latter instituted proceedings under SARFAESI Act⁵ for recovery of its dues, which was sought to be assailed by the petitioner being contrary to the decision of RERA⁶, Greater Noida, Uttar Pradesh dated 01.12.2023. Hence, an application was initiated before the Debt Recovery Tribunal [“DRT”] *inter alia* assailing the arbitrary action of respondent No.3 to seek recovery of loan from the petitioner in contravention of deemed subvention payment plan *vide* allotment letter dated 18.02.2016 and Master Circular dated 01.07.2015 in connection with “Housing Finance, issued by the RBI”.

¹ Equal Monthly Installments

² 2021 SCC OnLine SC 222

³ (2022) 11 SCC 449

⁴ 2023 SCC OnLine SC 435

⁵ Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002



6. It is admitted fact that DRT-II, Delhi *vide* order dated 18.06.2024 has dismissed the objections raised by the petitioner by passing detailed order and has allowed the respondent No.3 to take over the possession of the subject flat bearing No. Monza, 901, 9th floor situated at Oasis Grandstand GH-01 TS 01 B, Sector 22 D, Yamuna Expressway, Gautam Budh Nagar (UP).

7. Learned counsel for the petitioner has alluded to the directions passed by the Supreme Court in the case of **Himanshu Singh v. Union of India**⁷ whereby the home buyers who have entered into “subvention plan scheme” with the builder & the NBFCs have been granted interim relief to the effect that no coercive action shall be taken against them including prosecution under Section 138 of the Negotiable Instruments Act, 1881.

8. Learned counsel for the respondent No.1 has urged that auction of the flat in question was scheduled today and no bids have been received, and therefore, the relief which has been claimed by the petitioner in the present writ petition has become infructuous insofar as seeking quashing of notice dated 22.08.2024 is concerned. Be that as it may, since the petitioner has already approached DRT, which has passed the order dated 18.06.2024 dismissing their IA No. 2947/2024, it would be appropriate that the petitioner may file an appeal and seek reliefs on the strength of directions dated 15.07.2024 passed by the Supreme Court. This approach is all the more necessitated since the

⁶ Real Estate Regulatory Authority

⁷ Special Leave to Appeal (C) No. 7649/2023 decided on 15.07.2024



possession of the subject flat has already been taking over by the respondent No.3 and same is sought to be auctioned.

9. In view of the above the present writ petition is dismissed as being not maintainable before this Court with liberty to the petitioner to approach the Debt Recovery Appellate Tribunal [“**DRAT**”] for seeking appropriate reliefs. However, this shall be without prejudice to the rights and contentions of the parties.

DHARMESH SHARMA, J.

AUGUST 22, 2024

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