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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13280/2024**

SMT. POOJA & ORS.

.....Petitioners

Through: Mr. S.K. Bhaduri, Mr. Ahishek
Parmar and Ms. Neetu Gupta,
Advs.

versus

**JM FINANCIAL ASSET RECONSTRUCTION COMPANY
LIMITED & ORS.**

.....Respondents

Through: Mr. Rishabh Malik, Ms.
Vishakha Panchal and Ms.
Bhavi Garg, Advs.
Ms. Avni Singh, Adv. for
GNCTD

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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20.09.2024

CM APPL. 55485/2024 (Ex.)

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

W.P.(C) 13280/2024 & CM APPL. 55486/2024 (Stay)

3. The petitioners, who are twelve in number, are invoking the writ jurisdiction of this Court for setting aside the order dated 31.07.2024 by the learned CMM, East District, Karkardooma Courts, Delhi, passed in the application bearing CRL.MISC. No. 1098/2024 filed under Section 14(1) of the SARFAESI Act¹¹, moved by the secured creditor/respondents; and consequential directions for restraining the receiver from taking possession of the subject property

¹¹ The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002



on 21.09.2024.

4. Learned counsel for respondent No.2/bank is present on advance notice.

5. It is the case of the petitioners that the respondent No.3/Mr. Surender Sharma executed a registered Gift Deed in favour of his wife/respondent No.4/Smt. Meena Sharma dated 31.01.2018; and that pursuant to the aforesaid Gift Deed, each of the petitioners bought different portions in the property which had been constructed by respondent No.5/builder *vide* registered Sale Deed executed on different dates; and that in the registered Sale Deed, a specific declaration was given to the effect that the portion of the property being sold was free from any kind of charge, mortgage or any other encumbrance etc.

6. It is the case of the petitioners that on 18.12.2023, consequent to a notice affixed at the site under Section 13(8) of the SARFAESI Act. they came to know that a loan had been taken by the builders from respondent No.2 by mortgaging the subject property.

7. It is submitted by the learned counsel for the petitioners that they have already filed a complaint seeking criminal action against the builder for defrauding them. It is submitted that they are *bona-fide* purchasers of the property in question and they were not aware of any charge or mortgage created on the subject property with respondent No.2.

8. Learned counsel for the petitioners has urged that no Show Cause Notice has been issued individually to any of the petitioners and now by virtue of the impugned order dated 31.08.2024 passed in the application under Section 14 of the SARFAESI Act by the learned CMM, the threat of dispossession of their families from the subject



property looms large, which family members comprise elders and children, etc.

9. Learned counsel for the respondent No.2 has urged that the original Gift Deed was retained by the Bank before advancing the loan, which loan account became NPA for non-payment on the part of the respondent No.5/Builder.

10. During the course of arguments, it was acknowledged by learned counsels for the petitioners that petitioner No.12 has already filed an application under Section 17 of SARFAESI Act, which came up for hearing today before the learned DRT-I, New Delhi and the orders in the said application have been reserved.

11. Having heard the learned counsels for the parties and on perusal of the record, it is manifest that the petitioners have chosen to invoke the writ jurisdiction of this Court at the eleventh hour. They have had sufficient time to seek appropriate remedies against any purported action under the SARFAESI Act. However, having regard the totality of the facts and circumstances of the case and the right of shelter of the petitioners being threatened, the present writ petition is disposed of as not maintainable for there being an efficacious remedy available to the petitioners before the learned DRT except that no coercive process shall be taken against the petitioners till Monday i.e. 23.09.2024.

12. A copy of this Order be given *dasti* to learned counsels for the parties under the signature of the Court Master.

DHARMESH SHARMA, J.

SEPTEMBER 20, 2024

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