$~36

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

\+ W.P.(C) 16347/2024 & C.M.Nos.69006-69007/2024

NAZIR AMHAD .....Petitioner

Through: Ms.Iqura Khan with Ms.Nida Parveen and Mr.Zahied F Chouhan, Advocates.

versus

DEVELOPMENT CREDIT BANK DCB LTD & ANR. .....Respondents

Through: Mr.Anish Bhola, Advocate for DCB Bank Limited (Through VC).

% Date of Decision: 26th November, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present petition has been filed challenging the order dated 28th June, 2024 passed by the Chief Metropolitan Magistrate (CMM), South District, Saket Courts, Delhi whereby a receiver was appointed for taking possession of the Petitioner's property bearing no. B-220/1, part of Khasra no.548/135, Savitri Nagar, New Delhi-110017 ("subject property") and the possession notice dated 08th November, 2024 issued by the Receiver to take possession of the subject property on 25th November, 2024. The Petitioner further challenges the order dated 19th November, 2024 passed by DRT-II, Delhi in TSA No. 324/2022 whereby the application filed by the Petitioner for stay

on possession notice dated 08th November, 2024 was dismissed.

2. Learned counsel for the Petitioner states that on 5th November, 2007, the Petitioner had mortgaged the subject property with Citi Financial Consumer Finance India Limited to avail a home equity loan of Rs.10,90,000/- which was subsequently transferred to Respondent no.1-Bank in 2013-2014. She states that the Petitioner re-paid the entire amount along with interest by January, 2020.

3. She states that Respondent no.1-Bank issued a demand notice dated 19th April, 2021 under Section 13(2) of SARFAESI Act calling upon the Petitioner to pay an amount of Rs.4,94,132.86/-. She states that the Petitioner filed S.A. No.36/2022 before DRT-I, Delhi whereby vide order dated 17th January, 2022, Respondent no.1-Bank was restrained from taking physical possession of the subject property subject to payment of Rs.1,50,000/- by the Petitioner. S.A. No. 36/2022 was subsequently transferred to DRT-II, Delhi being TSA No. 324/2022.

4. She states that on 13th May, 2024, Respondent no.1-Bank surreptitiously filed a fresh application under Section 14 of SARFAESI Act before the CMM which was allowed vide order dated 28th June, 2024.

5. Having heard learned counsel for the Petitioner and having perused the impugned order, this Court finds that the case set-up by the Petitioner is at variance with the facts mentioned in the impugned order. The DRT-II, Delhi has found that the Petitioner neither deposited any EMI/ further amount after 18th January, 2022 nor took any steps to settle the matter amicably with the respondent no.1-Bank. DRT-II in the impugned order has also noted that the Petitioner had refused to deposit the amount of Rs.5 lakh as a pre-condition for stay of the possession notice.

6. It is settled law that the High Courts in writ jurisdiction should not ignore the availability of statutory remedies. (See: ***PHR Invent Educational Society v. UCO Bank & Ors.: 2024 SCC Online SC 528***)

7. Consequently, keeping in view the disputed facts as well as the availability of alternative remedy, the present writ petition along with the applications is disposed of with liberty to the petitioner to file alternative proceedings in accordance with law. The rights and contentions of all the parties are left open.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 26, 2024
KA