19.11.2025
Ct. No. 30
S.L. No. 29
SM

CO 3683 of 2023
Dinesh Agarwal
Versus
Fullerton India Home Finance Limited & Ors.

Mr. Akash Dutta
Ms. Sadhana Rao
Mr. Zafar Sultan
……for the respondent no. 1 & 2

1. The writ application has been preferred praying for direction upon the opposite parties as to why the impugned order and/or judgment complained of dated September 29, 2023 passed by the Hon'ble Chairperson, Debts Recovery Appellate Tribunal, Kolkata, in Appeal No. 104 of 2023 (Dinesh Agarwal-Vs- Fullerton India Home Finance Limited and Ors), should not be set aside as well as why an order for redemption of mortgage by the petitioner shall not be passed after adjusting the damages suffered by the petitioner for dismantling the furniture from the subject property and to upon making payment for redemption of mortgage to hand over vacant peaceful physical possession of the said property to your petitioner together with all the furniture which were lying at the said property at the time of taking physical possession by the petitioner.

2. The petitioner has filed a written note. Let the same be kept with the record.

3. On hearing the learned counsels for the parties and on perusal of the order under challenge dated

29.09.2023 passed by the Debt Recovery Appellate Tribunal at Kolkata in Appeal No. 104 of 2023, the relevant findings of the tribunal are as follows:-

> *7. A bare perusal of the record will show that secured asset was mortgaged with the respondent no.1 financial institution by creating equitable mortgage by depositing the original title deed Appellant purchased the secured asset on 23.02.2019. Appellate purchased the secured asset on 28.11.2020.*
>
> *8. Section 13(13) of the Act reads as under:*
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> *13(13) - "No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor."*
>
> *9. Respondent no.1 has prior charge over the property. Hence any sale by respondent no.3 in favour of the appellant is held to be barred by the provision of sub-section (13) of Section 13 of the Act. Accordingly, SARFAESI action initiated by the respondent no.1 financial institution cannot be challenged by the appellant by preferring an application u/s 17 of the Act. As has been rightly observed by the learned DRT that appellant would have right to proceed against his vendor, i.e. respondent*

> *no.3 in accordance with law, if so wishes. But since the SARFAESI action has been initiated by respondent no.1 financial institution in accordance with the provisions of the Act and appellant cannot be held as 'person aggrieved', SARFAESI application is not legally maintainable.*

4. On the said finding the appellate tribunal was pleased to dismiss the appeal.

5. The petitioner herein submits that he is ready to pay the amount and purchase the property.

6. It is submitted by the opposite parties that the property had already been auctioned in accordance with law.

7. Admittedly, the petitioner herein has purchased a mortgaged property and had done so even without the vendor handing over the original deed of the property. A litigant not acting in accordance with law, is not entitled to any relief.

8. The writ application thus having no merit stands dismissed.

9. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

[Shampa Dutt (Paul). J]