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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04th October, 2023

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W.P.(C) 6200/2023

BANK OF MAHARASHTRA

..... Petitioner

Through: Mr. Abhindra Maheshwari, Adv.

versus

PINAKI RANJAN BISWAS & ORS. Respondents

Through: Mr. R. P. Agrawal and Ms.
Snigdha Agarwal, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. (ORAL)

1. None appears for respondents no. 1 and 2 despite service of notice.
2. In the given circumstances, this Court does not consider it apposite to await representation on behalf of respondents no. 1 and 2 (hereafter '**contesting respondents**')
3. The petitioner has filed the present petition impugning an order dated 10.10.2022 (hereafter '**the impugned order**'), passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**'), in I.A.No. 104/22 and 646/22, in M.C. No. 104/2022.
4. By virtue of the impugned order, the appeal (Inward No. 566/2018) preferred by the contesting respondents, which was dismissed in default on 02.08.2019 for want of deposit of Court fee, was restored.



5. The petitioner is also aggrieved by the order passed by the learned DRAT in respect of I.A. No. 646/22 on the assumption that the said order interdicts the petitioner from taking further steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**SARFAESI Act**'). The said order reads as under:

"I.A. No. 646/22

Ld. Counsel for the appellant prays for restraining the respondent no. 1 Bank for taking over the possession of the property which is scheduled for today at 1.30 p.m. Ld. Counsel for the appellant states that appellant is not the borrower of the respondent bank and as per Section 26D of SARFAESI Act, the respondent no. 1 Bank has no charge over the property in question. He further states that there are other floors in the premises and respondent no. 1 can take possession of these floors. Ld. Counsel for the appellant has also referred to Section 56 of the SARFAESI Act.

Ld. Counsel for the respondent no. 1 Bank (Bank of Maharashtra) states that the impugned order dated 05.09.2018 is in accordance with law and since the appellant has defaulted, the bank is well within its right to take possession in view of the order passed by the Ld. DRT. Ld. Counsel for the respondent no. 1 Bank states that respondent Bank has incurred expenses of approximately 1.5 lacs for the appointment of receiver for taking possession.

Heard. In view of the various legal questions raised, let reply be filed by the respondent Bank i.e. Bank of Maharashtra. In case the appeal is decided against the appellant, he will pay the cost of receiver which comes to Rs. 1.5 lacs.

List the matter on 09.02.2023."

6. The petitioner, is under the impression that the learned DRAT has interdicted the petitioner from taking any steps under the SARFAESI Act. However, it is apparent from the impugned order that the learned DRAT has recorded contentions of the parties but has not



passed any specific directions interdicting the petitioner from takings steps for enforcement of the security interest under the SARFAESI Act.

7. Even if it is assumed that a direction staying further steps under the SARFAESI Act is implicit in the said order, it is apparent that the same is not informed by any reason.

8. The petitioner bank had filed an application (Misc. CrI. No. 1475/2022), under Section 14(2) of the SARFAESI Act, before the learned Chief Metropolitan Magistrate (CMM), for seeking assistance to take possession of the mortgaged property described as “Ground Floor Of Property Bearing MCD No. 943/8, At Plot No. 109, Part Of Khasra No. 317/2, Khewat No. 118/308 Situated At Arjun Nagar, Kotla Mubarakpur, New Delhi - 110003, Admeasuring 200 Square Yards”.

9. The said application was allowed and the learned CMM had appointed a Court Receiver to take possession of the mortgaged property.

10. Aggrieved by the said order, the contesting respondents filed an application (S.A. No. 13/2017) under Section 17(1) of the SARFAESI Act, which was disposed of by the learned Debts Recovery Tribunal (hereafter ‘DRT’), in terms of the order dated 05.09.2018. It was the case of the contesting respondents that they are lawful owners of the mortgaged property and had not encumbered the same.

11. The learned DRT had considered the said application and had found that the charge in respect of the mortgaged property was created prior to the sale of the property to the contesting respondents. Paragraph 43 and 44 of the order dated 05.09.2018, passed by the learned DRT, are set out below:



“43. The priority charge has already been decided in **(para 16 to 26 of this final order in SA No.20/2015)** in favour of the respondent bank on the direction that the right created by mortgage property in question in favour of the respondent bank on 15.01.2013 on the basis of registered sale deed dated 18.06.2012 (Exb.DW1/10).

44. Therefore, the mortgage of the respondent No.1 bank is prior to the purchase of the applicant and respondent No.5 and the dues of the respondent No.1 bank is around more than Rs.5.11 crores thus, the respondent bank is entitled to recover its entire dues from the property in question.”

12. The appeal (Inward No. 566/2018) preferred by the contesting respondents against the order dated 05.09.2018 was dismissed by an order dated 02.08.2019 for want of deposit of Court fee. But was restored by the learned DRAT by the impugned order passed on 10.10.2022.

13. In the meanwhile, the petitioner had approached the learned CMM once again (Misc. Crl. No. 1475/2022) under Section 14(2) of the SARFAESI Act for seeking assistance to take possession of the mortgaged property.

14. This application was allowed by an order dated 29.08.2022. It appears that in view of the said order, the contesting respondents were once again galvanised to seek restoration of the appeal before the learned DRT, which was dismissed on 02.08.2019.

15. It is clear from the above that the principal question to be addressed is whether the petitioner bank had acquired interest in the mortgaged property prior to the contesting respondents acquiring any interest or title in the same.

16. We do not propose to examine this question in this petition.



However, it is apparent that the learned DRAT has not considered the same in the impugned order. Thus, if the impugned order is construed as restraining the petitioner from taking steps for enforcement of its security interest in the mortgaged property, the impugned order would be liable to be set aside.

17. We are of the view that the impugned order cannot be read as interdicting the petitioner from proceeding against the mortgaged property for enforcement of its security interest under the SARFAESI Act.

18. We do not consider it apposite to set aside the impugned order as the petitioner's grievance essentially stems from reading the impugned order as interdicting it from taking any steps in respect of the mortgaged property, under the SARFAESI Act. The same has been clarified. Therefore, the petitioner's principal grievance does not survive.

19. Although the petitioner is also aggrieved by restoration of the appeal, we do not consider it apposite to set aside the order of the learned DRAT restoring the appeal.

20. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 4, 2023

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