

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

% **Date of decision: 9th April, 2020**

+ **W.P.(C) 2958/2020**

AJAY KUMAR

..... PETITIONER

Through: Mr. Neeraj Shrama, Adv.

Versus

IIFL HOME FINANCE LTD.

.....RESPONDENT

Through: Mr. Ram Kumar & Ms. Bindu Das,
Advs. with Mr. Ram Sharma,
Attorney of the Respondent

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

1. This petition impugns the order dated 30th March, 2020 of the Debt Recovery Tribunal-III, Delhi in case No.NDN/441/2020/SA in a petition under Section 17 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (DRT Act) preferred by the petitioner against the action of the respondent under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) of taking physical possession of the secured asset viz. property bearing nos.75 & 76, Block G, Pocket-26, Sector-3, Rohini, Delhi-110085.

2. The Debt Recovery Tribunal (DRT) vide the impugned order, in view of the grave situation prevailing in the country with regard to Covid-19 and taking a lenient view, directed restoration of possession of two floors (out of five floors existing in the properties) viz. the ground floor and

second floor subject to deposit by the petitioner of Rs.6 lacs by the next day and of a third floor subject to the petitioner depositing another sum of Rs.4 lacs, with the respondent. However, the first and fourth floors were ordered to remain in the possession of the respondent till entire outstanding payment, then stated to be of about Rs.65 lacs was paid by the petitioner to the respondent.

3. Mr. Neeraj Sharma, counsel for the petitioner has contended that, (i) the petitioner along with his wife Manisha Kumar and three minor children was residing on the first floor of the property; (ii) that the other floors of the property were in occupation of the tenants of the petitioner; (iii) that the petitioner, his family members along with the tenants and their family since 19th March, 2020, when they were dispossessed, are residing in a single room accommodation in Rohini, Delhi; and, (iv) the petitioner undertakes to this Court to, within one month of the lifting of the lockdown, whether totally or partially, to settle with the respondent and pay the entire settlement amount to the respondent and seeks permission to the petitioner, his family, the tenants and their families to, for the time being reoccupy the property.

4. Ms. Bindu Das, Advocate for the respondent along with Mr. Ram Sharma, Attorney of the respondent has contended that (a) the petitioner is engaged in the business of running educational institutions / coaching centres; (b) that the petitioner is accused in a case relating to leakage of a examination paper and remained in custody for some time; (c) the petitioner in the past also has been making false promises; (d) the subject loan was taken by the petitioner and the educational institutions / coaching centres managed and operated by the petitioner as well as by Mrs. Manish Kumar,

wife of the petitioner who in fact is the owner of the secured asset; (e) the petition under Section 17 of the DRT Act before the DRT is misconceived for non-impleadment of the mortgager Mrs. Manisha Kumar; (f) the respondent has no objection to the petitioner and others in occupation of the property removing their household articles from the property; (g) the petitioner is already in default of the concession granted by the DRT and is not entitled to any further concession; and, (h) as against an amount of Rs.6 lacs, the petitioner has paid only about Rs.3,48,000/- to the respondent.

5. We have considered the rival contentions and though do not find any error requiring interference in the impugned order dated 30th March, 2020 of the DRT but, without interfering with the same and in view of the unprecedented situation prevailing in the country particularly in Delhi owing to the lockdown, are of the opinion that the petitioner along with his wife and three minor children should be permitted to reoccupy only the first floor of the property which was in their occupation, to prevent them from being exposed to the prevailing pandemic. However such reoccupation would be purely as an interim measure and the possession of the said first floor of the property also shall be deemed to be of the respondent pursuant to measures taken under Section 14 of the SARFAESI Act. We further clarify that such reoccupation of the first floor shall be under orders of the Court. As far as the reoccupation by the tenants of the petitioner, sought, is concerned, neither are the said tenants before us nor can the statutory action taken by the respondent be undone to enable the petitioner to earn rent from the tenants.

6. We have however enquired from Mr. Neeraj Sharma, Advocate for the petitioner whether he has instructions also on behalf of Mrs. Manisha Kumar, wife of the petitioner.

7. Mr. Neeraj Sharma, Advocate, after passover and after obtaining telephonic instructions states that he has the authority to give undertaking on behalf of both, the petitioner and his wife Mrs. Manisha Kumar.

8. The petitioner and his wife Mrs. Manisha Kumar, through Mr. Neeraj Sharma, Advocate, undertake to this Court, to within one month of lifting of the lockdown, whether completely or partially in Delhi, if unable to settle with the respondent and to pay the said settlement amount to the respondent, to peacefully vacate the said first floor of the property without causing any hindrance and to put the respondent back into possession and custody thereof as the respondent is today. They further undertake that on being so permitted to occupy the first floor, they will not induct any other person into occupation of the said first floor and will not encroach upon any other portions of the property which shall remain in the custody of the respondent.

9. We accept the aforesaid undertaking of the petitioner and his wife Mrs. Manisha Kumar and they are ordered to be bound thereby and are informed through counsel Mr. Neeraj Sharma of the consequences of breach of undertaking given to the Court.

10. We accordingly direct as under:

- (i) that the respondent forthwith permits the petitioner Ajay Kumar and his wife Mrs. Manisha Kumar to occupy the first floor of the property bearing no.75 & 76, Block G, Pocket-26,

Sector-3, Rohini, Delhi-110085 under orders aforesaid of this Court and as custodians on behalf of the Court;

- (ii) To permit the other occupants of the property to take out their belongings from the other portions of the aforesaid property on any day and time of their choice and make it clear that once they have so taken out the belongings, they shall be left with no claims against the respondent; and,
- (iii) If the petitioner and his wife Mrs. Manisha Kumar along with their three minor children do not so comply with the undertaking, the respondent shall be entitled to take all steps in continuation of the earlier action under Section 14 of the SARFAESI Act for removing the petitioner, his wife and children from the said first floor and to use reasonable force for the said purpose and / or to initiate proceedings for breach of undertaking given to the Court by the petitioner and his wife.

11. With the aforesaid, the petition is disposed of.

RAJIV SAHAI ENDLAW, J.

MANOJ KUMAR OHRI, J.

APRIL 09, 2020
'gsr'