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

% Judgment reserved on: 09.09.2024
Judgment delivered on: 08.10.2024

\+ W.P.(C) 12601/2024 & CM APPL. 52400-01/2024

VEENA JAIN .....Petitioner

versus

CITY UNION BANK LIMITED & ORS .... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjay Jain, Senior Advocate with Mr. Nalin Tripathi, Mr. Vidur Mohan, Mr. Nishank Tripathi, Ms. Harshita Sukhija, Ms. Palak Jain, Mr. Nischal Tripathi, Mr. Kaushal K. Singh, Advocates.

For the Respondents : Mr. Devendra Sain and Mr. Siddharth Sain, Advocates. (Through VC)

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

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Articles 226 & 227 of the Constitution of India, 1950 seeking setting aside of an order dated 2nd September, 2024 passed by the Debt Recovery Tribunal in SA/326/2024 as well as an order dated 3rd September, 2024 passed by Debt Recovery Appellate Tribunal in Misc. Appeal No. 277/2024; the order dated 5th August, 2024 passed by the Chief Judicial Magistrate, Rohini Courts, Delhi in Ct. Case No. 9335/2024 and any action taken

pursuant thereto. Petitioner further seeks setting aside of Auction Notice dated 5th July, 2024; the Demand Notice dated 30th January, 2024 and quashing of the entire SARFAESI proceedings initiated by respondent no.1-Bank as well as a direction to respondent no.1 to consider the Proposal dated 30th August, 2024 given by the petitioner.

2. The facts shorn of unnecessary details and as culled out from the petition are as under:-

(i) Petitioner had applied for a Home Loan on 18th August, 2017 from respondent no.1/Bank for an amount of Rs.3,00,00,000/- (Rupees Three Crores). The said Loan Application was approved and a Home Loan facility was sanctioned for the said amount on 20th September, 2017. The said Loan mandated that the loan amount was to be repaid in 180 Equated Monthly Installments (EMIs) of Rs.3,31,619.68/- each.

(ii) The petitioner continued to pay the monthly installments uptill the month of November, 2023, however, she could not pay the EMI for the month of December, 2023. The petitioner claims that the respondent bank arbitrarily, under the guise of *'Group Non-Performing Asset'*, proceeded to recall the loan, where the outstanding of the loan was shown as Rs.2,62,43,079/-. The respondent bank claims to have declared the said home loan as NPA on 18th February, 2024.

(iii) The petitioner, on 30th April, 2024, deposited a sum of Rs.1,00,00,000/- in the Home Loan Account. It is the case of the petitioner that the said payment was accepted by the respondent bank, wherein the petitioner was assured that upon regular

payments being made, the respondent bank shall not proceed further with any action under the SARFAESI Act, 2002.

(iv) The Petitioner claims to have paid a sum of Rs.25,00,000/- on 25th May, 2024 and further a sum of Rs.5,00,000/- in July, 2024. It is the case of the petitioner that despite making payments, the respondent bank issued a Tender cum Sale Notice on 5th July, 2024 wherein the outstanding loan amount was shown as Rs. 1,52,69,412/-.

(v) It is the case of the petitioner that the property of which possession has been taken is the residential house where the petitioner is residing with her family members and hence, having paid nearly 50% of the outstanding loan amount, the petitioner requested the respondent bank that the tenure of the loan may not be disturbed, but the home loan be restructured, so that the petitioner can pay the outstanding loan amount in EMIs.

(vi) However, the respondent bank obtained the impugned order dated 5th August, 2024 passed in Ct. Case No. 9335/2024 under Section 14 of SARFAESI Act, whereby the learned CJM, Rohini Courts, Delhi had directed that the possession of the secured asset be taken on 3rd September, 2024.

(vii) Being aggrieved by the said order, the petitioner filed S.A. No. 326/2024, wherein notice was issued on 23rd August, 2024. Thereafter, on 28th August, 2024, learned DRT-I, New Delhi directed the respondent bank to consider the request of the petitioner sympathetically and to take a decision on the proposal of the petitioner.

(viii) On 30th August, 2024, the petitioner submitted the proposal stating that having paid 50% of the outstanding loan amount, her home loan may be restructured so that she can pay off her liability. The Petitioner in order to prove her *bona fide,* assured learned DRT-I, New Delhi that the petitioner would deposit three (3) months' EMIs with the respondent bank, to secure that the restructured loan is never in default.

(ix) However, it is the case of the petitioner that the learned DRT-I, New Delhi, *vide* impugned order dated 2nd September, 2024, without hearing the matter on merits, declined the interim relief to the petitioner on the basis of facts contrary to the record.

(x) Thereafter, an appeal being Misc. Appeal No. 277/2024 was filed by the petitioner before the learned DRAT, wherein *vide* order dated 3rd September, 2024, the petitioner was directed to deposit 25% of the outstanding amount of Rs.12.58 Crores as pre-deposit,merely on the ground of mandatory condition of pre-deposit as per the regime of Section 18 of SARFAESI Act. It is the case of the petitioner that the assessment of the said amount required for such a pre-deposit was done in a wholly arbitrary manner, in that, the Home Loan, wherein the petitioner was an applicant and the Cash Credit Facility, wherein neither the petitioner was an applicant nor a Guarantor, have been clubbed/amalgamated. Consequently, the petitioner has been asked to pre-deposit 25% of the outstanding amounts of the clubbed/amalgamated loans, availed by the petitioner and the proprietorship concern of the son of the petitioner i.e., respondent

no.2-M/s. Shree Vimal Sagar Jewellers through respondent no.3-Mr. Manish Jain,amounting to Rs.12.58 Crores. Hence, the present petition has been filed.

CONTENTIONS OF THE PETITIONER:-

3. Mr. Sanjay Jain, learned Senior Counsel for the petitioner, at the outset, canvassed before this Court that the respondent bank has committed a gross illegality by clubbing/amalgamating the loan availed of by the petitioner with that of the proprietorship firm of her son i.e., respondent no.2-M/s. Shree Vimal Sagar Jewellers, which is contrary to the banking regulations. According to learned Senior Counsel, both the loans are separate and distinct, availed of by two individuals who have nothing in common, save their familial relationship. He submits that merely because the petitioner and respondent no.3 are related would not mean that the loans or the debt are interchangeable. He urged that not only the respondent bank committed this illegality but even the learned DRAT committed an error by not drawing the distinction between the two sets of loans and directing the petitioner to deposit the mandatory pre-deposit of at least 25% of the combined alleged loans due, of the petitioner as well as the firm of respondent no.3. He canvassed that the petitioner asserted before the learned DRAT that if given some time, the petitioner would make good the pre-deposit, but on the Home Loan amount alleged to be due and payable by her, which is claimed to be only a sum of Rs. 1,50,78,805/-. However, the Appellate Tribunal did not consider this submission causing injustice.

4. Learned Senior Counsel invited the attention of this Court to the documents at pages 241, 245 and 249 of the paperbook to submit that it

is apparent from the reading of the said letters that the loan account of the petitioner and that of respondent no.2/firm are separate and distinct, yet combining them together; initiating proceedings under Section 14 of the SARFAESI Act, 2002 and taking over possession of the dwelling house of the petitioner is absolutely unfair, illegal and contrary to the banking regulations. He painstakingly sought to draw the distinction between the two loan amounts and attempted to impress upon this Court that while the petitioner had availed of a Home Loan, the respondent no.2/firm had availed of an OLCC facility for business purposes and that both the said loans were distinct. He stated that it is not disputed by the respondent bank that the petitioner was regularly depositing the EMIs barring a few times and had repaid more than 50% of the dues. He contended that in such circumstances, it is unfair and unjust for the respondent bank to proceed with Section 14, SARFAESI proceedings. He further contended that the petitioner is ready and willing to make good the pre-deposit for the alleged loan amount due and payable against her for the Home Loan alone.

5. Mr. Jain vehemently contended that on the one hand, the respondent bank declared the loan account of the petitioner as NPA on 18th February, 2024 while on the other, claimed to have issued Section 13(2) SARFAESI notice on 30th January, 2024 upon the petitioner. He forcefully urged that the same is impermissible in law. He contended that it is only after the account is declared as NPA that the proceedings under Section 13 of the SARFAESI Act are to be initiated. He urged that having regard to the aforesaid fact, which according to him, cannot be denied by the respondent bank, the entire proceedings initiated by the

respondent bank are vitiated. He stated that this legal issue also was neither examined nor considered by the learned DRAT.

6. Learned Senior Counsel for the petitioner contended that the respondent bank misconstrued and misrepresented the entire issue in respect of the Enhanced Mortgaged Debt of Rs. 10 Crores. He stated that the original debt of the respondent no.2 was Rs. 7.5 Crores which was subsequently enhanced by Rs. 2.5 Crores. This was the breakup of the amount of Rs. 10 Crores. It was contended that the subject property of the petitioner was offered as collateral, only for the enhanced amount of Rs. 2.5 Crores, and not for the total amount of Rs. 10 Crores. He thus contended that at best, the property of the petitioner would be a security only for an amount of Rs. 2.5 Crores. As against that, learned Senior Counsel urged that directing the petitioner to make a pre-deposit of 25% on the sum of Rs. 12.58 Crores (Rs. 10 Crores and interest thereon) is neither justified, nor legally tenable.

7. In continuation of the aforesaid arguments, learned Senior Counsel for the petitioner stated that the enhanced mortgaged amount of Rs.2.5 Crores having been repaid by the respondent no.2 would automatically result in discharge of the liability of the petitioner's house as a mortgaged property. That apart, the petitioner will also be discharged of the liability as a mortgager/guarantor. Additionally, he urged that the petitioner, who was till the year 2023 shown as guarantor in the documents evidencing loan to respondent no.2, was deleted in the documents issued by the respondent bank in the year 2023-24. Based on the said facts, learned Senior Counsel submitted that it is clear that the respondent bank itself was treating the petitioner and her property as

mortgager and mortgaged property respectively *qua* an amount of Rs.2.5 Crores alone. He thus submits that the impugned order of the learned DRAT is contrary to the facts on record.

8. Mr. Sanjay Jain, learned Senior Counsel also contended that the petitioner had offered her subject property only as collateral and as such, she would not be termed as a guarantor/mortgagor. He urged that the petitioner therefore, cannot be treated and dealt with as a mortgagor.

9. Learned Senior Counsel for the petitioner forcefully contended that the manner in which the respondent bank has proceeded with the whole issue has subjected the petitioner and her family to civil death. He also submitted that the respondent bank has violated the guidelines laid down by the Supreme Court in the case of ***Standard Chartered Bank vs. V. Noble Kumar, (2013) 9 SCC 620*** and on a false statement, obtained the impugned order dated 5th August, 2024 from learned CJM. Learned Senior Counsel prays that the present petition be allowed in view of the apparent illegality.

CONTENTIONS OF THE RESPONDENT BANK:-

10. Mr. Devendra Sain, learned counsel for the respondent appeared through VC and vehemently opposed the submission urged by the petitioner.

11. Learned counsel for the respondent contended that the property of the petitioner, contrary to the submissions made by the learned Senior Counsel for the petitioner, was mortgaged for the entire amount of Rs.10 Crores and not just limited to Rs.2.5 Crores enhanced debt. He stated that the loan is secured by six properties and that the property in question was extended as a mortgage *vide* the letter dated 29th June,

2018. He drew attention of this Court to the letter dated 29th June, 2018 at page 241 of the paperbook to submit that from para 6, it is apparent that the said property was offered as a mortgaged property for the OLCC extended to the account of respondent no.2, for an amount of Rs.10 Crores. He submitted that there is nothing in the said letter which supports the contentions urged by the petitioner that the property was mortgaged only against the enhanced sum of Rs.2.5 Crores. He contended that the submissions of the petitioner *qua* the contents of letter dated 29th June, 2018 are misleading and the letter clearly extends the subject property as a mortgage for respondent no.2's Cash Credit Limit facility.

12. Learned counsel for the respondent also invited the attention of this Court to Annexure P-27 at page 251 of the paperbook to submit that in the letter dated 23rd October, 2019, it is categorically mentioned that the OLCC account in respect of Rs.10 Crores is still due and payable. On this basis, he submitted that the order of the learned DRAT to the extent of directing the petitioner to make a pre-deposit of 25% on a sum of Rs.12.58 Crores as a pre-condition for hearing the appeal, cannot be questioned.

13. The learned counsel for the respondent also submitted that in response to the letter dated 12th July, 2024 submitted by the petitioner, requesting the respondent bank to release the mortgaged property bearing House No. 87, Block E, Veer Nagar, Jain Colony, Delhi-110007, the respondent bank had made an offer *vide* the letter dated 18thJuly, 2024 asking the petitioner to pay Rs.25 Lakhs on or before 20th July, 2024 and Rs.165 Lakhs on or before 10th August, 2024. Learned

counsel for respondent submitted that this too, was not honoured by the petitioner despite having appended her signatures on the letter dated 18th July, 2024 in token of her agreement. He thus, submitted that the petitioner has not demonstrated her *bona fides* and as such, this Court may dismiss the present writ petition.

ANALYSIS AND CONCLUSION:-

14. This Court has heard Mr. Sanjay Jain, learned Senior Counsel appearing for the petitioner, Mr. Devendra Sain, learned counsel appearing for the respondent bank and examined the documents on record.

15. A perusal of the impugned order dated 3rd September, 2024 indicates that the learned DRAT had directed the petitioner to make a pre-deposit of atleast 25% of the outstanding amount of Rs.12.58 Crores before hearing the appeal on merits. The learned DRAT has, *prima facie,* observed that the petitioner had bound herself by extending the mortgaged property to secure the additional credit facilities granted to the respondent no.2/borrower *vide* the letter dated 29th June, 2018 and that is how the Tribunal concluded that the outstanding amount due is Rs.12.58 Crores. While passing the direction of making a pre-deposit to the extent of 25% of the outstanding amount, the learned Tribunal relied upon the judgment of the Supreme Court in ***Kotak Mahindra Bank (P) Ltd. v. Ambuj A. Kasliwal, (2021) 3 SCC 549.*** The Supreme Court in the said judgment had held that even the High Courts do not have the power to waive the pre-deposit in its entirety and that no sum less than 25% of the debt can be directed to be deposited as a pre-condition to hearing the appeal. In that view of the matter, the learned Tribunal

passed the aforesaid directions. It is apparent that the Tribunal which is the Appellate Authority has not heard the matter on merits. In such circumstances, it is unfathomable to expect this Court to hear and consider the matter on the merits of the case.

16. Since the learned Senior Counsel for the petitioner sought to demonstrate before this Court that the sum of Rs.12.58 Crores arrived at by the learned Tribunal is not borne out from the records of the case, this Court is venturing to examine issues germane and limited only to that extent. In fact, learned Senior Counsel for the petitioner was at pains to demonstrate that the petitioner at best could be directed to make a pre-deposit of 25% on a sum of Rs.1,50,78,805/- claimed to be the amount which may be outstanding in so far as the petitioner is concerned.

17. To the extent delineated by this Court in the above paragraph, the submissions made and the documents referred to in support thereof need to be considered.

18. Learned Senior Counsel for petitioner had referred to the letters at pages 241, 245 and 249 of the paperbook which emanated from the petitioner. This Court has perused the said letters and finds that the OLCC account in respect of respondent no.2 firm for a sum of Rs.10 Crores against which admittedly the petitioner had mortgaged her property which was not closed in any of the three letters. Even in the letter dated 23rd October, 2019, though two loan accounts availed of by the respondent no.2 firm as borrowers have been shown as closed, the OLCC account to the extent of an amount of Rs.10 Crores is still shown as not closed, being due and payable. From a perusal of the three letters,

it is not discernable that the property of the petitioner was mortgaged only to the extent of Rs.2.5 Crores and not for the total amount of Rs.10 Crores. This is clear from a combined reading of para 4 with para 6 of the said letters. Thus, we do not find any reason to agree with the submissions based on the three letters.

19. Learned Senior Counsel for the petitioner had also referred to the sanction ticket dated 30th June, 2017 to submit that the OLCC, as on that day, was for an amount of Rs.7.5 Crores, which was subsequently enhanced by a sum of Rs.2.5 Crores indicating that the property of the petitioner was offered as collateral only to the said extent of the enhanced sum i.e. Rs. 2.5 Crores. This Court has carefully examined the said documents and is unable to agree with the said contention. There is nothing in the said document to indicate that the property of the petitioner was offered for the enhanced debt amount of Rs.2.5 Crores alone. Hence, the contentions based on the said documents are untenable.

20. So far as the argument regarding the illegality committed by the respondent bank on account of the loan account of the petitioner being declared as NPA on 18th February, 2024 while issuing the notice under section 13(2) of the SARFAESI Act, 2002 on 30th January, 2024 being impermissible in law is concerned, the said issue needs to be tested on facts by the Appellate Tribunal. Whether the contention has any merit in it or not cannot be a subject matter of this Court, lest the same prejudice any of the parties even prior to the appeal pending before the learned DRAT is decided on merits. Though it was argued as if this aspect is purely an issue of law, yet, this Court finds that the same is interlinked

and intertwined with the facts on which such issue of law would be based. Hence, it is considered prudent, at this stage, to leave the said issue to be decided in the appeal filed by the petitioner before the learned Tribunal.

21. This Court has not found even a single document placed on record or pointed out by the learned Senior Counsel for the petitioner which would clearly indicate the subject mortgaged property to have been offered as collateral only to the extent of an amount of Rs.2.5 Crores and not the total amount of Rs.10 Crores as OLCC *qua* respondent no.2 firm. In fact, the documents referred to by the learned Senior Counsel for petitioner depict to the contrary. None of the documents referred to by the petitioner come to the rescue of the submissions made in that regard.

22. Keeping in view the limited examination above, we are not in agreement with the contentions urged on behalf of the petitioner and refrain to venture into disputed questions of facts which are purely within the jurisdiction of the learned Tribunal. The only question examined by us was in respect of the quantum of the outstanding *qua* which the mandatory pre-deposit of atleast 25% ought to be deposited by the petitioner with the learned Tribunal as a pre-condition for hearing her appeal. The quantum based on the calculation so projected by the learned Senior Counsel for the petitioner, not having been accepted at this stage, by this Court, the petitioner is relegated to approach the learned DRAT in accordance with the directions passed by it in the impugned order dated 3rd September, 2024.

23. In view of the aforesaid, the writ petition is dismissed without any order as to costs.

TUSHAR RAO GEDELA, J

CHIEF JUSTICE

OCTOBER 08, 2024/*rl*