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

+ W.P.(C) 2000/2024 & CM APPL. 8368-8369/2024

SH DEVKI NANDAN AND ANR.

..... Petitioners

Through: Mr. Sidharth Chopra, Mr. Navneet
Thakran & Mr. Chandan Sinha, Adv.
M: 8800773248
Email: chandansinha008@gmail.com

versus

M/S CAPRI GLOBAL HOUSING FINANCE LIMITED
AND ORS.

..... Respondents

Through: Mr. Gaurav Srivastava, Adv.
(Through VC)

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Date of Decision: 09th February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 8369/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 2000/2024 & CM APPL. 8368/2024

3. The present petition has been filed under Articles 226 and 227 of the Constitution of India seeking setting aside the order dated 02nd February, 2024 passed by the learned Chief Metropolitan Magistrate (“CMM”), North District, Rohini Court whereby the learned CMM has directed the receiver to take physical possession of the property bearing No. 20, out of Khasra



No. 93/2 situated in Lal Dora of Village Azad Pur in Mandir Wali Gali, North West Delhi, Delhi-110033.

4. There is further prayer for setting aside of the possession notice dated 05th February, 2024 issued by the receiver.

5. Learned counsel appearing for the petitioners submits that the petitioner had approached the learned Debts Recovery Tribunal (“DRT”) against the initiation of the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (“SARFAESI”) Act before the learned CMM.

6. The interim application of the petitioners was dismissed by the learned DRT vide order dated 05th July, 2023. Thus, against the said order the petitioners have already filed an appeal which is pending before the Debt Recovery Appellate Tribunal (“DRAT”).

7. The present petition has been filed on account of the petitioner having received an order dated 02nd February, 2024 passed by the learned CMM wherein the receiver has been directed to take physical possession of the property in question.

8. Learned counsel appearing for the petitioner submits that the receiver has issued a possession notice dated 05th February, 2024, wherein it is stated that the receiver shall take possession of the property on 12th February, 2024 at 02:00 P.M. onwards. The said possession notice dated 05th February, 2024 issued by the receiver is reproduced as under:

“
To,
The Authorized Officer,
Capri Global Housing Finance Limited
Branch Office: 9B, 2nd Floor, Pusa Road,
Rajendra Place, New Delhi-110060

Dated 05.02.2024



NOTICE FOR TAKING POSSESSION

You are being informed that undersigned has been appointed as receiver by the Court of Sh. Virender Singh, CMM, (North District), Rohini Courts, Delhi (Now successor court of Ms. Neha Gupta Singh, CMM, North, Rohini Delhi) in Ct. Case No. 546/2023, case titled as “Capri Global Housing Finance Ltd., Vs. Gautam Kumar” vide order dated 08.06.2023 for taking the possession of the mortgaged property i.e. “All that piece, part and parcel of land and building built up 3rd floor, with roof rights, area admeasuring 135 sq. yards, (112.87 Sq. Meters), built up on property No.20, out of Khasra No. 93/2, situated in the Lal Dora of Village Azad Pur in Mandir Wali Gali, North West Delhi, Delhi-110033. Together with the undivided proportionate freehold right of the land underneath, bounded as: East: Property of others (part of Khasra), West by: Property No.21, North by: Gali 6 Feet, south by: Property of others”, with the police assistance including one lady police official.

This is to inform you that the undersigned will take possession of the above property on 12.02.2024 at 02:30 p.m. onwards. You are therefore, required to be present at the property on 12.02.2024 at 02:00 onwards to take the possession in compliance with the orders, dated 08.06.2023 and subsequent order dated 02.02.2024. Copy of orders are enclosed herewith.

Note: In terms of earlier notice dt. 17.06.2023, the possession of the property could not be taken over due to non availability of police aid by the SHO concerned.

*Deepika Kalra
Advocate
Court Receiver”*

9. Learned counsel appearing for the petitioner has drawn the attention of this Court to the application filed by the petitioner under Section 18 of the SARFAESI Act before the DRAT. The Said application has been attached as *Annexure P-18* to the present petition. The prayer of the said application filed on behalf of the petitioner before the DRAT reads as under:

“xxx xxx xxx

a) *Allow this present application and pass an order Restraining the*



Respondent Bank, its employees, representatives, officers, agents etc. from proceeding ahead in respect of notice dated 08.06.2023 which was reinstated on 02.02.2024 and/or any other notice, action or measure arising from or in connection with its notice dated 08.06.2023 and/or under Section 13(4) and 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, issued qua the property Bearing No. 20, Out of Khasra No. 93/2, Situated At Lal Dora Village, Azadpur Mandir Wali Gali, Delhi, 110033.

b) Pass an order thereby directing the Respondent No.1 to maintain status quo with respect to the property bearing no. 20, Out of Khasra No. 93/2, situated At Lal Dora Village, Azadpur Mandir Wali Gali, Delhi, 110033 till the pendency of the present Appeal.

c) Pass such order or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.”

10. Learned counsel appearing for the petitioners submits that though the aforesaid application has been filed before the learned DRAT with respect to the order dated 02nd February, 2024 passed by the learned CMM and the possession notice dated 05th February, 2024 issued by the receiver, however, the said application has not been taken up as yet. He submits that the said application was listed before the DRAT today, however, the learned Chairman of the DRAT did not hold the Court today. As per the information received from the registry of the DRAT, the learned Chairman of the DRAT will not hold the Court for the next couple of days.

11. Mr. Gaurav Srivastava, learned counsel appearing for the respondent submits that as per his information, the learned Chairman, DRAT will resume his duties on 13th February, 2024.

12. Thus, in view of the aforesaid, learned counsel appearing for the petitioner submits that he may be granted an audience by the DRAT and his application may be heard before any action is taken by the receiver pursuant to the order dated 02nd February, 2024 passed by the learned CMM.

13. Having heard learned counsel for the parties and having perused the



documents on record, this Court notes that since the petitioner herein has already approached the learned DRAT in appropriate proceedings, the orders shall be passed by the learned DRAT after hearing the petitioners, in accordance with law.

14. However, considering the fact that the learned Chairman, DRAT is not holding his Court till 13th February, 2024 and that as per the possession notice dated 05th February, 2024, the possession of the properties is slated to be taken on 12th February, 2024, it is directed that the possession notice dated 05th February, 2024 issued by the learned receiver shall remain in abeyance till 13th February, 2024, when the application filed by the petitioners is taken up for hearing by the learned DRAT.

15. The present petition is disposed of in terms of the aforesaid directions.

16. However, it is clarified that in case the learned Chairman of the DRAT does not hold the Court on 13th February, 2024 also, the petitioners shall be at liberty to approach this Court for appropriate orders.

MINI PUSHKARNA, J

FEBRUARY 9, 2024/kr