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

\+ W.P.(C) 11306/2022, CM APPL. 33237/2022 & CM APPL. 33238/2022

NITU SINGH ..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. Kumar Sushobhan, Advocate.

versus

HDFC BANK LTD ..... Respondent

Through: Mr Sanjeev Pathak, Advocate for HDFC.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

O R D E R

% 01.08.2022

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 33613/2022 (By petitioner for impleadment of Mr. Rajeev Saumitra, Director & Founder, Paramount Coaching Centre Pvt. Ltd. as R-2)

1. This is an application filed by the petitioner for impleadment of Mr Rajeev Saumitra, Director & Founder, Paramount Coaching Centre Pvt. Ltd. as R-2.
2. For the reasons mentioned in the application, it is allowed and Mr Rajeev Saumitra is impleaded as R-2.
3. Amended memo of parties is taken on record.
4. The application stands disposed-off.

W.P.(C) 11306/2022, CM APPL. 33237/2022 & CM APPL.

5. The learned Senior Advocate for the petitioner contends that the order dated 15.07.2022 of the DRT is patently erroneous both on facts and in law, therefore, this court's writ jurisdiction is sought to be invoked, as the efficacious remedy.
6. By the order dated 10.07.2019 passed by DRT-III in S.A. No. 150/2019, the petitioner was permitted to deposit Rs.2.55 crores against the claim of Rs. 2.75 crores by the lender-bank. The petitioner had already deposited Rs.20 lacs. She claims 50% ownership in the property which was to be auctioned to recover the dues. To protect the interests of the bank the said order directed deposit of almost 90% of the outstanding claimed amount. The money was deposited before the learned DRT and was kept in an FDR. In effect, the interest of the lender-bank was totally secured. The petitioner says that all that remained to be done was for the monies to be released to the Bank and correspondingly, the title documents of the property to be released to the petitioner.
7. The bank moved an application seeking withdrawal of the amount, which was not taken up and then it approached the learned DRAT, which by order dated 05.04.2022 in M.A. No. 23/2021 directed the learned DRT to hear and decide the application M.A. No.173/2019 on 02.05.2022 or as early as possible.
8. By order dated 15.07.2022 the DRT-III has rejected the petitioner's application (M.A. No. 173/2019) and held as under:

"…

6. It is also more interesting to point out that Nitu Singh, at the time of disposal of SA 150/2019 on the basis of settlement, had agreed to pay all the dues of respondent bank, which was in tune of Rs. 2.75 crores. Out of which 20 lakhs had to be paid on the day of settlement and rest Rs 2.55 crore was to be paid on or before 11/09/2019. <u>But she cleverly offered to deposit 2.55 crore with registry of DRT-3 to show her intention to purchase the property-in question claiming her 50% share instead of paying the debt amount to respondent bank and diverted the issue of sale of the property-in-question by the bank, consequently: she not only succeeded to save her property from SARFAESI action initiated by the respondent bank but she also stalled the recovery of debt amount, which is public money, for about 3 years since filing of M.A.</u>
...”

(Emphasis supplied)

9. The learned Senior Advocate for the petitioner submits that the said observation is contrary to the records because the money was deposited in terms of the order dated 10.07.2019, which reads *inter-alia* as under:

“...
In the present matter, Id. counsel for the applicant stated that she wants to purchase the said property and she is ready to pay Rs.2.55 crores as she is entitled the share to the extent of 50% of the property and the costs of the property was fixed for Rs.4.00 and some buyer Mr. Neeraj Grover was ready to purchase the said property for the said amount i.e. Rs.4.00 crores.

Taking note of the facts as she is entitled to the share of 50% and she is paying over and above 50% and at this juncture she is ready to deposit Rs.2.55 crores with this Tribunal. In the meantime, the applicant is directed to deposit Rs.2.55 crores before this Tribunal on or before 13.09.2019 and Registry is directed to keep the said amount in the "No Lien Higher Interest Bearing Account" till further

orders.
...”

10. A Demand Draft dated 13.09.2019 for the said amount of Rs.2.55 crores was deposited.
11. The learned Senior Advocate for the petitioner further submits that the said amounts were deposited on the basis of the orders passed under the SARFAESI Act, 2002, therefore, there can be no question of “diverting the issue of sale”. The entire amount claimed under section 13(2) of the SARFAESI Act, 2002 has been deposited.
12. The learned counsel for the respondent-Bank submits that the Bank is primarily concerned with the repayment of loan/overdue amount for which the property had been put up as security.
13. The petitioner has no objection to the deposited Rs.2.75 crores being released to the Bank, along with interest, that may have accrued thereon. Appropriate application will be moved by them for release of the monies to the Bank.
14. In view of the above, the learned counsel for R-1 states upon instructions from Mr Abhishek Aggarwal, Zonal Manager, HDFC Bank (Mobile No.: 9650909876) that no coercive action will be taken against the petitioner in terms of the impugned order.
15. Issue notice. The learned counsel named above accepts notice on behalf of the respondent-bank. The learned counsel for the respondent-bank seeks and is granted two weeks time to file a reply. Rejoinder thereto, if any, be filed before the next date.
16. Issue notice to the R-2 through ordinary process, Speed Post, approved courier, WhatsApp, Signal, SMS, e-mail, through other

viable modes of electronic service, through counsel as well, returnable on 18.10.2022.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

AUGUST 01, 2022
SS/MK