



\$~46(Appellate)

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

+ CM(M) 1207/2022

SHRIMATI GUPTA

..... Petitioner

Through: Mr. C.M. Grover, Advocate.

versus

DEEPAK GUPTA AND ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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11.11.2022

CM APPL. 48334/2022 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. CS 857/2022 (*Shrimati Gupta v. Deepak Gupta*) stands instituted by the petitioner against the respondents in respect of property situated at A-256, New Lahore, Shastri Nagar, Khureji Khas, Shahdara, Delhi-110031 (“the suit property”). The suit seeks a declaration, as null and void, the mortgage of the suit property with Respondent 2 (Defendant 2 in the suit) as well as cancellation of the said mortgage. Additionally, mandatory injunction has been sought, for a direction to Respondent 2 to return the title deeds to the petitioner. There are specific allegations, in the suit, of collusion and fraud against both the respondents.



4. During the pendency of the suit, it appears that Respondent 2 initiated proceedings against the petitioner against the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI Act”), pursuant to which, on 22nd October 2002, the learned Chief Metropolitan Magistrate (“the learned CMM”) in its MISC CRL 160/2022 (***CAPRI Global Capital Ltd. v. Deepak Gupta***) instituted under Section 14 of the SARFAESI Act, directed that the suit property be taken over by a receiver and forwarded to Respondent 2.

5. The petitioner, in these circumstances, moved an application before the learned Civil Judge under Section 151 of the CPC, seeking a direction for maintenance of *status quo* in respect of the suit property till the next date of hearing in the suit.

6. The said application stands dismissed by the learned Civil Judge vide order dated 1st November 2022, which forms subject matter of challenge in the present petition instituted under Article 227 of the Constitution of India.

7. The learned Civil Judge has rejected the petitioner’s application essentially, on the two grounds, viz. (i) that the petitioner, had with her, an equally efficacious remedy before the learned Debt Recovery Tribunal (“the learned DRT”), thereby justifying rejection of the request for *status quo* in view of Section 41(h) of the Specific Relief Act, 1963; and – (ii) the learned Civil Judge did not have the power to stay the proceedings before the learned CMM.

8. Mr. C.M Grover, learned counsel for the petitioner submits that,



in passing the impugned order, the learned Civil Judge has misdirected herself. He submits that, in view of the specific allegations of fraud against Respondent 2, of which the learned Civil Judge has also taken note in the impugned order, the embargo under Section 34 of the SARFAESI Act, against injuncting actions taken under the said Act, would not apply in view of the law laid down by the Supreme Court in **Mardia Chemicals Ltd. v. UOI**¹ which has been followed by this Court in **Tajunissa v. Vishal Sharma**². He further submits that the learned Civil Judge is also in error in holding that the petitioner had with it an equally efficacious remedy before the DRT, as the order dated 22nd October, 2022 of the learned CMM was not appealable under the SARFAESI Act.

9. In view of the aforesaid, issue notice, returnable on 11th April 2023. Notice be served on the respondents by all permissible modes including *dasti* as well as the learned counsel, who appeared on behalf of the petitioner before the learned Civil Judge, if any. Replies be filed within four weeks with advance copy to the learned counsel for the petitioner who may file rejoinder thereto within four weeks thereof.

10. Though there is no separate application filed by the petitioner seeking interlocutory relief, prayer 2 in the writ petition seeks *status quo*, till 15th November 2022. Mr. Grover, however, submits that the reference to “15th November 2022” was inadvertent as the petitioner’s application stands rejected by the learned Civil Judge by the impugned order dated 1st November 2022. He seeks stay of operation of the said order.

¹ (2004) 4 SCC 311
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11. Till the next date of hearing, *status quo* shall be maintained in respect of property No.A-256 New Lahore, Shastri Nagar, Khureji Khas, Shahdara, Delhi-110031.

12. List on 11th April 2023.

C.HARI SHANKAR, J

NOVEMBER 11, 2022/ak