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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 4/2018**
M.P.S. EXIM PVT. LTD. & ORS Plaintiffs

Through: Ms. Astha Gupta, Adv.

Versus

MR. DHARMENDER YADAV & ORS Defendants

Through: Mr. Gaurav Mitra, Mr. Kartik
Nagarkatti & Ms. Rashmita Roy
Chowdhury, Advs. for D-1 to 4.
Mr. Ajay Uppal, Adv. for D-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.07.2019**

IA No.11082/2018 (of the defendant no.5 under Section 151 CPC)

1. The applicant / defendant no.5 Tata Capital Financial Services Ltd. seeks clarification of the *ex parte* order dated 8th January, 2018 directing the defendants to maintain *status quo* with respect to possession and title of second floor of house No.6, Block B, Kashmiri Co-operative House Building Society Ltd., Pamposh Enclave, New Delhi.
2. The counsel for the applicant / defendant no.5 states that (i) applicant / defendant no.5 is a Non Banking Financial Company (NBFC) entitled to invoke the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act); (ii) the three plaintiffs viz. (1) M.P.S. Exim Pvt. Ltd., (2) Peeyush Aggarwal, and, (3) Omkam Global Capital Pvt. Ltd. had availed of financial facilities from the defendant no.5 against security of the aforesaid second floor of house No.6, Block B, Kashmiri Co-operative House Building Society Ltd., Pamposh



Enclave, New Delhi; and, (iii) the plaintiffs defaulted in repayment and proceedings under Section 13 of the SARFAESI Act were initiated, but possession cannot be taken owing to the interim order in the present suit. The defendant no.5 thus seeks clarification that the interim order does not come in the way of defendant no.5 proceeding under the SARFAESI Act.

3. The three plaintiffs have instituted this suit for recovery of possession, rent and *mesne* profits of / with respect to the said second floor of house No.6, Block B, Kashmiri Co-operative House Building Society Ltd., Pamposh Enclave, New Delhi, from the defendants no.1 to 4, viz. (i) Dharmender Yadav, (ii) Ballesh Yadav, (iii) Yaduvanshi Developers Pvt. Ltd., and, (iv) Asia Buildwell Pvt. Ltd., *inter alia* claiming the said defendants to be the ex-lessees of the plaintiffs who have failed to vacate the property despite termination of tenancy.

4. The counsel for the plaintiffs however seeks adjournment stating that the plaintiffs are attempting to settle with the defendant no.5 and insists upon such adjournment instead of the clarification sought by the defendant no.5 being dealt with.

5. I have enquired from the counsel for the plaintiffs, whether not the factum of the plaintiffs, in this suit filed against the ex-lessees for recovery of possession, arrears of rent and *mesne* profits, having also impleaded defendant no.5, who was neither a necessary nor a proper party thereto and whether not the conduct of the plaintiff of today objecting to the clarification sought by the defendant no.5 and pursuant whereunto the defendant no.5 can recover possession of the property from the defendant no.1&4 shows collusion of the plaintiffs and the defendants no. 1 to 4, in as much as if the defendant no.5 takes possession from defendants no.1 to 4, upon the



plaintiffs succeeding in the suit, will be entitled to immediately get possession from defendant no.5.

6. The counsel for the plaintiffs, though had earlier inspite of being told so, insisted on adjournment but now agrees that she has no objection to the clarification sought.

7. The counsel for the defendants no.1 to 4 states that defendants no.1 to 4 are controverting the claim of the plaintiffs of a lease between the plaintiffs and the defendants no.1 to 4 and claim to be agreement purchasers from the plaintiffs, in possession in pursuance to the Agreement to Sell executed by the plaintiffs in favour of the defendants no.1 to 4. It is also stated that the defendants no.1 to 4 have paid the entire sale consideration of Rs.3.5 crores to the plaintiffs.

8. The counsel for the defendants no.1 to 4 also points out that in the suit as originally filed, the defendant no.5 was not a party but the defendant no.5 subsequently applied to be impleaded as a party.

9. I have enquired from the counsel for the defendants no.1 to 4, the date of the agreement to purchase set up by the defendants no.1 to 4.

10. The counsel for the defendants no.1 to 4 states that there is no agreement to sell in writing but the agreement is of October, 2009.

11. To be able to enjoy the benefit of possession in part performance of an agreement to sell, under Section 53A of the Transfer of Property Act, 1882, the Agreement to Sell has to be in writing and registered. This is pursuant to the amendment of the Stamp Act, 1899, Registration Act, 1908 and Transfer of Property Act, 1881, of September, 2001. Thus, the defendants no.1 to 4, claiming to be agreement purchasers under an



oral agreement, are not entitled to any rights in the property till a deed of transfer is executed in their favour and are not entitled to protect their possession.

12. The counsel for the defendants no.1 to 4 on enquiry states that no suit for specific performance has been filed by the defendants no.1 to 4 as yet.

13. The defendants no.1 to 4 thus, as of now, have no right in the property and their claim if any will be under Section 17 of the SARFAESI Act.

14. The application is thus allowed.

15. Rather, it is inexplicable as to why the defendant no.5, if was not a party to the suit, treated itself to be bound by the order and got itself impleaded in the suit.

16. Be that as it may, it is now clarified that the order dated 18th January, 2018 shall not come in the way of defendant no.5 Tata Capital Financial Services Ltd. taking steps as per its entitlement under SARFAESI Act and other laws, with respect to second floor of house No.6, Block B, Kashmiri Co-operative House Building Society Ltd., Pamposh Enclave, New Delhi.

17. No observation in this order will affect the findings in Section 17 SARFAESI Act proceedings.

18. The application is disposed of.

IA No.188/2018 (of the plaintiffs under Order XXXIX Rules 1&2 CPC)

19. The interim order, insofar as against the defendants no.1 to 4, is made absolute till the disposal of the suit.

20. The application is disposed of.



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21. The counsel for defendants no.1 to 4 states that no written statement to the amended plaint, which was directed against defendant no.5 only, is required to be filed.
22. The counsel for the plaintiffs to give another copy of the amended plaint to the counsel for the defendant no.5 today itself.
23. The defendant no.5 to take a call whether it wants to continue to be a party in the present suit and if it so decides, to file written statement within 30 days.
24. Replication within further 30 days thereafter.
25. List for framing of issues if any on 2nd December, 2019.

Dasti.

RAJIV SAHAI ENDLAW, J

JULY 09, 2019

‘gsr’..

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