

# Vishakha Aggarwal vs Iifl Home Finance Ltd. And Ors on 16 November, 2021

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

\$~51 (2021 Cause List)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12899/2021

VISHAKHA AGGARWAL

Through:

..... Pet  
Mr. Vivek Chib, Senior Advoc  
with Mr. Vaibhav Sethi, Ms.  
Pathania, Mr. Kartik Sabharw  
Advocates.

versus

IIFL HOME FINANCE LTD. AND ORS

..... Respondents

Through: Mr. Pallav Saxena on behalf of R-  
1/IIFL.

Mr. Gaurav Kakar, Advocate for  
R-2 and R-3.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN  
ORDER

% 16.11.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

CM APPL. 40661/2021 (for exemption) Exemption allowed, subject to all just exceptions. This application stands disposed of.

W.P.(C) 12899/2021

1. Issue notice. Mr. Pallav Saxena, learned counsel, accepts notice on behalf of the respondent No.1- IIFL Home Finance Ltd. ["IIFL"]. Mr. Gaurav Kakar, learned counsel, accepts notice on behalf of the respondent Nos. 2 and 3. Respondent No.2 is a partnership firm of which the petitioner's husband (respondent No.3 herein) is the only surviving partner. Respondent Nos. 4, 5 and 6 are the other legal heirs of the deceased son of the petitioner. Their presence is not required in view of the order that I propose to pass.

2. The petitioner claims to be a legal heir of her deceased son, late Mr. Akansh Aggarwal, who passed away on 02.02.2020. The deceased was also a partner in the respondent No.2- M/s Nav

Bharti Impex, in which the respondent No.3 is the only other partner. The partnership firm took certain loans from IIFL against the security of the property (B-1/74, Safdarjung Enclave, Delhi) ["the property"], of which the respondent No.3 is admittedly the sole owner.

3. The petitioner, in her capacity as a legal heir of one of the partners of the borrower firm, has instituted the present petition against the measures taken by IIFL for possession of the property under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFEASI Act"]. By an order dated 10.09.2021, the Chief Metropolitan Magistrate ["CMM"] has, on the application of IIFL, appointed a Receiver to take possession of the property. In the meanwhile, the respondent nos. 4 to 6 instituted proceedings against IIFL before the DRT, Chandigarh, which has passed an order dated 04.10.2021, directing IIFL not to take any coercive steps in respect of the second floor of the property which is under the occupation of the said respondents. The CMM has thereafter passed an order dated 01.11.2021 clarifying that the Receiver would take possession of the property, excluding the second floor thereof. The Receiver has given a notice dated 02.11.2021, proposing to take possession of the property on 18.11.2021. The petitioner has challenged the action of IIFL by way of proceedings under Section 17 of the SARFAESI Act filed before the Debts Recovery Tribunal ["DRT"]- I, Delhi vide Diary No. 226/2021 dated 12.11.2021. However, the application has not been taken up for hearing as the DRTs in Delhi are presently non-functional for want of Presiding Officers. It is in these circumstances that the petitioner has been compelled to approach this Court under Article 226 of the Constitution.

4. There is considerable controversy between the parties as to the facts of the present case. It is, however, undisputed that the respondent Nos. 4, 5 and 6 have filed a Civil Suit in this Court being CS (OS) No. 142/2020 for partition, in which the Court has granted an interim injunction. It is the case of the IIFL that the injunction granted by the order of this Court dated 17.06.2020 has not been extended by subsequent orders, and that IIFL is not a party to the suit.

5. Be that as it may, IIFL has also instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, against the respondent No. 2 and the respondent No.3 herein. Mr. Saxena refers to an order dated 27.09.2021, passed by this Court in OMP(I)(COMM) 295/2021 regarding a statement of the respondent No.3 to the effect that he is taking all possible steps to liquidate the liability towards IIFL as he is the only surviving partner of the respondent No. 2. As recorded above, the respondent No. 4 has also challenged the measures taken by the IIFL under the SARFAESI Act in respect of the portion of the property in her possession by way of Securitization Application being SA No. 150/2021 before the DRT-II, Chandigarh. By an order dated 04.10.2021, the DRT- II, Chandigarh has directed IIFL not to take any coercive actions with regard to the second floor of the mortgaged property until further orders.

6. As all the DRTs and Debts Recovery Appellate Tribunal ["DRAT"] in Delhi are presently non-functional, this Court has had occasion to consider several similar petitions. Although some petitions under Article 226 of the Constitution were entertained, it was thereafter brought to the notice of the Court that the DRAT is empowered to transfer the applications/petitions to another functional DRT within the jurisdiction of the DRAT on the ground of urgency, in exercise of the powers conferred by Section 17(7) of the SARFAESI Act read with Section 17A(2) of the Recovery of

Debts and Bankruptcy Act, 1993 ["RDB Act"]. Several orders were passed by the DRAT, Delhi transferring proceedings from the DRTs in Delhi to DRT, Jaipur, which is the only functional DRT within the jurisdiction of the DRAT, Delhi. This Court also disposed of petitions under Article 226 of the Constitution with liberty to the petitioners to approach the DRAT, Delhi for such relief.

7. However, the aforesaid course has now been rendered impossible by virtue of the fact that the learned Chairperson of the DRAT, Delhi has also demitted office on 30.10.2021 in terms of a notification dated 29.10.2021, issued by the Department of Financial Services, Ministry of Finance, Government of India.

8. The question to be considered in these circumstances is whether it would be appropriate to entertain the present proceedings on merits, or for this Court to exercise the power under Section 17(7) of the SARFAESI Act read with Section 17A(2) of the RDB Act, which read as follows:-

Section 17(7) of the SARFAESI Act -

"17- Right to Appeal-

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

Section 17A(2) of the RDB Act -

"17A - Power of Chairperson of Appellate Tribunal xxxx xxxx xxxx (2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal"

9. It is clear from the above that the Chairperson of the DRAT has jurisdiction to transfer a case from one DRT under his/her jurisdiction to another DRT. In the present situation where the office of the Chairperson of DRAT, Delhi is also vacant, this Court has taken the view that exercise of such power by this Court would be the appropriate course, as the petitioner's ordinary statutory remedy has been rendered unavailable for reasons beyond its control. Enabling a party to invoke that remedy is preferable to entertaining the case on merits in writ proceedings. Orders to this effect have been passed inter alia in W.P.(C) 12125/2021 [Shrim Industries And Ors. vs. Bank of Baroda And Anr.] and W.P.(C) 12595/2021 [Smt. Kamlesh vs. Indian Overseas Bank] on 10.11.2021.

10. Although the existence of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, this Court has relied upon the judgments of the Supreme Court which make it clear, particularly in the context of proceedings under the SARFAESI Act, that the writ jurisdiction should rarely be exercised.

11. In *United Bank of India vs. Satyawati Tondon and Others* (2010) 8 SCC 110, the Court held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

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45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad* [AIR 1969 SC 556] , *Whirlpool Corpn. v. Registrar of Trade Marks* [(1998) 8 SCC 1] and *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [(2003) 2 SCC 107] and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

(Emphasis supplied.)

12. The observations in Satyawati Tondon (supra) have been followed by the Supreme Court *inter alia* in *Authorized Officer, State Bank of Travancore and Another vs. Mathew K.C.* (2018) 3 SCC 85 [paragraphs 5, 9 to 15], and the recent judgment in *C. Bright vs. District Collector and Others* (2021) 2 SCC 392 [paragraph 22].

13. I am of the view that the transfer of proceedings in the present case also to a functional DRT would be consistent with this approach of the Supreme Court, rather than entertaining the proceedings under Article 226 of the Constitution.

14. Mr. Saxena submits that no amount has been deposited in respect of the debts in question for approximately last 15 months. The EMI is in the region of 11 Lakhs per month, although, the exact amount is susceptible to change as the loan bears a floating rate of interest. Mr. Saxena submits that if any interim relief is granted in favour of the petitioner, it may be made subject to deposit of substantial amounts.

15. I am of the view that the petitioner is entitled to agitate the grievances made by her in the Securitisation Application, which has not been taken up due to non-functioning of the DRTs. In order to enable her to pursue those remedies, it is necessary to grant some interim protection and the interest of parties can be balanced by directing without prejudice deposit to be made.

16. For the reasons aforesaid, the writ petition is disposed of within the following directions:-

a. The Securitisation Application filed by the petitioner before the DRT-I, Delhi, vide Diary No. 226/2021 dated 12.11.2021, and pending applications therein, if any, are transferred from the DRT-I, Delhi to DRT, Jaipur.

b. The Registrar, DRT-I, Delhi, is directed to transmit the records of the said Securitisation Application and pending Interlocutory Applications, if any, to DRT, Jaipur digitally. c. Learned counsel for the petitioner is also directed to coordinate with the Registrar DRT, Jaipur, to transmit the digital records of the aforesaid case to the DRT, Jaipur, if so permitted.

d. The proceedings be listed before the DRT, Jaipur for directions/hearing on 23.11.2021 at 2:00 PM. DRT, Jaipur will permit the parties to appear online (by video conferencing), if they so request.

e. DRT, Jaipur is directed to hear the petitioner's case at least on the question of interim relief, and pass appropriate orders, as expeditiously as possible, and latest by 07.12.2021. f. Subject to any other orders passed by the DRT, Jaipur in terms of the aforesaid directions, the Receiver appointed by the order of the CMM dated 01.11.2021 is directed to defer the proceedings for taking physical possession of the property (excluding the second floor) until 10.12.2021 at 11:00 AM. The Receiver will not be required to give any further notice to the petitioner for taking of possession on the aforesaid date, subject to any orders passed by the DRT, Jaipur on the petitioner's application(s) in terms of this order.

g. The aforesaid order is subject to deposit of a sum of 25 Lakhs by the petitioner with IIFL by 23.11.2021. The petitioner will also deposit a further sum of 25 Lakhs with IIFL by 07.12.2021.

h. The aforesaid amounts will be deposited and accepted without prejudice to the rights and contentions of the parties, and subject to the orders that may be passed by the DRT, Jaipur.

i. The petitioner and the respondent Nos. 2 and 3 are directed not to create any third-party interests in the title or possession of the property, and to maintain status quo with regard to the character of the property.

j. In the event, the petitioner does not deposit either of the instalment, as mentioned above, the Receiver will be entitled to take possession of the property (excluding second floor) upon 48 hours notice to the petitioner.

17. It is made clear that this Court has not entered into the merits of the petitioner's case, and the DRT, Jaipur will decide all issues in accordance with law.

18. The writ petition is disposed of with these directions.

PRATEEK JALAN, J NOVEMBER 16, 2021 'vp'