

Pankaj Aggarwal & Anr vs Union Of India & Ors on 29 October, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~49 (2021 Cause List)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12373/2021

PANKAJ AGGARWAL & ANR.

..... Petitioners

Through: Mr. Krishan Kumar, Mr. SP

Nangia and Mr. Shivam Bedi,
Advocates.

versus

UNION OF INDIA & ORS.

..... Resp

Through:

Mr. Ranvir Singh, CGSC for R

Ms. Chetna Bhalla, Advocate
R-3.

Mr. Garg, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 29.10.2021 The proceedings in the matter have been conducted through video conferencing.

CM APPL. 38906/2021 (for exemption) Exemption allowed, subject to all just exceptions. This application stands disposed of.

W.P.(C) 12373/2021 & CM APPL. 38905/2021 (for stay)

1. Issue notice to the respondent Nos. 3 and 4 at this stage. Ms. Chetna Bhalla, learned counsel, accepts notice on behalf of the respondent No. 3-ICICI Bank. Mr. V. Garg, learned counsel, accepts notice on behalf of the respondent No. 4-ICICI Home Finance.

2. The petitioners seek recourse against an order dated 12.10.2021 passed by the Chief Metropolitan Magistrate ["CMM"] at the instance of the respondent No. 3 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"]. By the said order, the learned CMM has appointed a Receiver to take possession of the petitioners' property being Flat No. A-1205, 12th Floor, Ahinsa Vatika, Ram Nagar, Loni Road, Shahdara, Delhi-110032 ["the property"]. The learned Receiver has issued a notice dated 21.10.2021 to the petitioners proposing to take over possession of the property on 05.11.2021.

3. Mr. Krishan Kumar, learned counsel for the petitioners, states that the petitioners have already approached the Debts Recovery Tribunal ["DRT"] under Section 17 of the SARFAESI Act. However, they have been compelled to approach this Court under Article 226 of the Constitution as their application has not been taken up for hearing since the DRTs in Delhi are presently non-functional for want of Presiding Officers.

4. Although several writ petitions have been entertained by this Court on this ground, it has since been brought to my notice that the Debts Recovery Appellate Tribunal ["DRAT"] is entertaining applications under Section 17(7) of the SARFAESI Act read with Section 17(A)(2) of the Recovery of Debts and Bankruptcy Act, 1993, for transfer of proceedings to a functional DRT on the ground of urgency. A copy of the order of the DRAT dated 13.10.2021 passed in Misc. Application No. 97/2021 arising out of the S.A. No. 86/2020 has also been placed before me.

5. Mr. Kumar states that the petitioners and the respondent No. 3 entered into a One Time Settlement on 15.09.2021, under which an amount of 69.11 Lakhs was to be paid by the petitioners by 30.09.2021. He has also placed on record a cheque for the said amount, which was issued by the respondent No. 4 in favour of the respondent No. 3. Mr. Garg, however, states that the process of obtaining a No Objection Certificate from the builder is still under way, and the payment has not been made for this reason.

6. In view of the fact that the statutory remedy, as aforesaid, is available to the petitioners, I am of the view that it would be appropriate to relegate the petitioners to that remedy instead of entertaining the dispute between the parties by way of this petition under Article 226 of the Constitution. Mr. Kumar states that the petitioners are agreeable to adopting this course of action, but seek some interim protection in view of the fact that possession is scheduled to be taken on 05.11.2021.

7. Having regard to the aforesaid facts, the learned Receiver, appointed by the learned CMM's order dated 12.10.2021, is directed to defer the taking of possession of the property until 06.12.2021, subject to the petitioners depositing a sum of 10 Lakhs with the respondent No. 3 by 05.11.2021. However, in the event the petitioners are able to coordinate with the respondent No. 4 and ensure that the amount of 69.11 Lakhs is deposited with the respondent No. 3 prior to 13.11.2021, no further deposit will be required to be made at this stage. The deposit may be made, and accepted without prejudice to the rights and contentions of the parties.

8. The petitioners are directed to maintain status quo with regard to the title, possession and character of the property.

9. Subject to any orders that may be passed by the DRAT/DRT pursuant to proceedings instituted by the petitioners, the learned Receiver will not be required to give any further notice to the petitioners to take possession of the property on 06.12.2021 at 2:30 PM.

10. The DRAT/DRT are requested to consider the petitioners' application expeditiously, keeping in mind the aforesaid schedule.

11. This Court has not entered into the merits of controversy between the parties, and this order is being passed only to enable the petitioners to avail of their statutory remedies.

12. The writ petition, alongwith the pending application, is disposed of with these directions.

PRATEEK JALAN, J OCTOBER 29, 2021 'vp'