

# **Gagan Deep Dugal & Ors ..... Petitioner: ... vs Also That The Petitioner Seeks To ... on 31 January, 2019**

**Author: Anu Malhotra**

**Bench: Anu Malhotra**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 1562/2018

GAGAN DEEP DUGAL & ORS

..... Petitioner:

Through: Ms.Kanika Agnihotri, Mr.Charitarth  
Bharti and Ms.Sukriti Gandhi,  
Advocates

versus

RELIGARE HOUSING DEVELOPEMNT FINANCE  
CORPORATION LTD

..... Respondent

Through: Mr.Jagdeep Kumar Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 31.01.2019 CM No.4575/2019 (for clarification) The matter is already fixed for 18.2.2019, and is taken up in view of the CM No. 4575/2019 that was filed by the petitioner herein seeking clarification of the directions dated 11.1.2019.

Vide order dated 20.12.2018 notice of the petition that had been filed by the petitioner herein and the accompanying application assailing the impugned order dated 30.11.2018 of the learned National Consumer Disputes Redressal Commission (NCDRC) in consumer Case No. 2609/2018 had been issued to the respondent with further directions to the effect that no coercive action be taken till the next date of hearing which interim order was vide order dated 11.1.2019 extended with the clarification as directed vide the order dated 11.1.2019 to the effect that the interim protection granted vide order dated 20.12.2018 would not amount to any restraint qua action, if any, to be taken in terms of SARFAESI Act in accordance with law.

The applicant/petitioner through the present application CM No. 4575/2019 which is vehemently opposed on behalf of the respondent, has sought that the operation of the order dated 11.1.2019 to the extent that it issued a clarification qua the order dated 20.12.2018 be stayed till the adjudication of the application. It was sought to be submitted on behalf of the petitioner that though so far no proceedings under the SARFAESI Act have been initiated by the respondent against the petitioner, there is a looming threat from the side of the respondent that such an action would be initiated. Apparently no such restraint as prayed by the petitioner against the invocation of the proceedings under the SARFAESI Act can be granted by this Court especially in view of the verdicts of the Hon'ble Supreme Court in United Bank of India V. Satyawati Tondon & Others; Civil Appeal No.

5990/2010; (2010) 8 SCC 110 and the verdict of the Hon'ble Supreme Court in *Authorized Officers, State Bank of Travancore v. Mathew K.C.*; (2018) 3 SCC 85 with observations in paragraph 15 thereof to the effect:

"15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex- parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tandon* (supra), has also not been kept in mind before passing the impugned interim order:-

"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, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

It has however now been submitted on behalf of the petitioner also that the petitioner seeks to deposit two EMIs each qua the loans of the petitioner qua the two loan account Nos. XMHDPNG00012012 for Rs.1,50,00,000/- and XMHDPNG00012036 for Rs.5,20,00,000/- and that the same would be deposited into the account of the respondent before 4 p.m. today and qua which it has been submitted on behalf of the respondent by the learned counsel for the respondent that in the event of deposit of the two EMIs qua the two loan accounts specified herein above before

4 p.m. today, the said two loan accounts would not be declared 'NPA'.

In view of the submission that have been made on behalf of either side the application calls for no further action and there can be no modification of the order dated 11.1.2019.

The application CM No.4575/2019 is disposed of. CM(M) 1562/2018 and CM Nos. 52944-52945/2018 The matter be renotified for the date 18.2.2019, as already fixed.

ANU MALHOTRA, J JANUARY 31, 2019/sv