

# Pradeep Gupta & Anr vs Hero Fincorp Limited & Ors on 29 November, 2021

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

\$~81 (2021 Cause List)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13429/2021 & CM APPL. 42341/2021 (stay)

PRADEEP GUPTA & ANR.

..... Petitioners

Through: Mr. Shantanu Bhardwaj &

Mr. Shyam Moorjani, Advocates

versus

HERO FINCORP LIMITED & ORS.

..... Respondents

Through: Mr. Aditya Prasad & Mr. Sriram

Kamal, Advocates for R-1/Hero  
Fincorp Limited.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 29.11.2021 The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. Issue notice. Mr. Aditya Prasad, learned counsel, accepts notice on behalf of respondent No.1-Hero Fincorp Limited. Notice to other respondents is not required in view of the order that I propose to pass.

2. The petitioners assail an order dated 22.10.2021, passed by the learned Chief Metropolitan Magistrate ["CMM"] on the application of respondent No. 1 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ["SARFAESI Act"] and actions taken by respondent No. 1 and the Receiver appointed by the CMM pursuant thereto.

3. By the aforesaid order dated 22.10.2021, the CMM appointed a Receiver over the property claimed by the petitioners [Upper Ground Floor, A-7A/8, Rana Pratap Bagh, New Delhi-110007], which the respondent No. 1 claimed as a security in respect of the loans advanced to respondent Nos. 2 to 5. By a notice dated 17.11.2021, the Receiver has given a notice of his intention to take possession of the property on 09.12.2021 at 2:00 PM. The petitioners have filed this petition under

Article 226 of the Constitution as the Debts Recovery Tribunal ["DRT"] and Debts Recovery Appellate Tribunal ["DRAT"] in Delhi are, at present, non-functional, as the offices of the Presiding Officers of the DRTs and learned Chairperson of DRAT are vacant.

4. In these circumstances, several similar petitions have come before this Court and this Court has taken the view that it is generally preferable to enable the parties to invoke their statutory remedies rather than to entertain petitions under Article 226 of the Constitution on merits. With this objective, in some cases, the Court has transferred proceedings from DRTs in Delhi to DRT, Jaipur [which is the only functional DRT within the jurisdiction of DRAT, Delhi], in exercise of powers under Section 17(7) of the SARFAESI Act, read with Section 17A(2) of the Recovery of Debts and Bankruptcy Act, 1993 ["RDB Act"].

5. In the present case, however, learned counsel for both the parties submit that the matter may await the appointment of a Presiding Officer in DRT, Delhi so that the petitioners' grievances can be addressed by the statutory Tribunal, and that the petitioners may be protected from dispossession in the meantime.

6. For the aforesaid reasons, the petition, alongwith the pending application, is disposed of with the following directions:

a. The petitioners are at liberty to file appropriate proceedings under Section 17 of the SARFAESI Act before the jurisdictional DRT by 03.12.2021.

b. The parties are also at liberty to apply for expeditious disposal of the proceedings before the DRT upon a Presiding Officer taking charge whether by way of a regular appointment or vesting of additional charge.

c. The respondent No.1 and the Receiver appointed by the order of the CMM dated 22.10.2021 are directed to defer proceedings for taking physical possession of the property until 07.01.2022. d. The DRT is requested to consider the request keeping in mind the timeline for physical possession.

e. In the absence of any orders passed by the DRT in this regard, the Receiver will be entitled to take possession on 07.01.2022 at 2:00PM without any further notice to the petitioners. f. In the event the DRT, Delhi is still non-functional, as of 31.12.2021, the petitioners will be at liberty to move the DRAT or this Court for transfer of the proceedings or any such relief as they may be entitled.

7. Mr. Shantanu Bhardwaj, learned counsel for the petitioners, states that the petitioners will deposit a further sum of 2 lakhs with respondent No. 1 by 08.12.2021, without prejudice to their rights and contentions. The deposit may be made and accepted without prejudice to the rights and contentions of the parties and subject to orders to be passed by the DRT in accordance with law.

8. It is made clear that this Court has not adjudicated upon the merits of the case, which will be determined by the DRT in accordance with law.

PRATEEK JALAN, J NOVEMBER 29, 2021 'hkaur'/'