

Smt Rita vs Indiabulls Housing Finance Ltd & Anr on 12 November, 2021

Author: Amit Bansal

Bench: Amit Bansal

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 1012/2021

SMT RITA

Through: Mr. Umesh Chandra Shukla, A

versus

INDIABULLS HOUSING FINANCE LTD & ANR. Respondents

Through: Ms. Sangeeta Sondhi, Advocate for R-1

Mr. Sanjeev Bhandari, Advocate for R-

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% 12.11.2021 [VIA VIDEO CONFERENCING] CM No.40225/2021(for exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CM(M) 1012/2021 & CM No.40224/2021(for interim relief)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 11th October, 2021 passed by the Chief Metropolitan Magistrate (CMM) and notice dated 27th October, 2021 issued by the Court appointed Receiver seeking to take possession of the property of the petitioner on 13th November, 2021 at 2.00 pm.

4. Counsel for the petitioner contends that a Securitization Application (SA) under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) has been filed by the petitioner against the impugned order of the CMM as well as the notice issued by the Court appointed Receiver, however, the same has not been taken up for consideration due to non-availability of Presiding Officer at the Debts Recovery Tribunal, Delhi (DRT). Accordingly, the petitioner is constrained to file the present petition.

5. Issue notice. Notice is accepted by the counsels appearing on advance notice on behalf of respondent no.1 and respondent no.2 respectively.

6. At oral request of the counsel for the petitioner, respondent no.3 is deleted from the array of parties. Let amended memo of parties be filed within two days.

7. On account of the fact that all three DRTs of Delhi are without Presiding Officers, several petitions have been filed in this Court seeking similar reliefs. It has been brought to the notice of the Court that a Coordinate Bench of this Court vide judgment dated 10th November, 2021 in W.P.(C) No.12595/2021 titled Smt. Kamlesh Vs. Indian Overseas Bank has transferred the SA filed by the petitioner therein to DRT, Jaipur and passed other directions. I concur with the view expressed by the Single Judge in Kamlesh (supra) that if the present petition is entertained by this Court on merits then, the statutory remedy provided to the petitioner under the SARFAESI Act is rendered meaningless and therefore, I propose to pass similar directions in this present petition. Counsels for the parties are agreeable for the same.

8. Accordingly, in line with the directions passed in Kamlesh (supra), the present petition is disposed of with the following directions:

i) The SA filed by the petitioner before DRT-III, Delhi, vide Diary No.236/2021 on 8th November, 2021 is transferred from DRT-III, Delhi to DRT, Jaipur. Counsel for the petitioner states that certain objections have been marked by the Registrar, DRT in respect of the said application and he undertakes to clear the same within three days.

ii) The Registrar, DRT-III, Delhi is directed to transmit the records of the said SA to DRT, Jaipur digitally.

iii) Counsel for the petitioner is also directed to coordinate with the Registrar, DRT-III, Delhi to transmit digital records of the application to the DRT, Jaipur if so directed.

iv) The application be listed before the DRT, Jaipur for directions/hearing on 22nd November, 2021 at 2.00 PM.

v) DRT, Jaipur will permit the parties to appear online, if they so request.

vi) DRT, Jaipur is directed to hear the petitioner's case on the aspect of interim relief and pass appropriate orders as expeditiously as possible and at the latest by 30th November, 2021.

vii) Subject to any orders that may be passed by the DRT, Jaipur in light of the above directions, the Court appointed Receiver is directed to defer the proceedings for taking physical possession of the properties until 5th December, 2021. The Receiver will not be required to give any further notice to petitioner for taking of possession of the property until 11.00 AM on 5th December, 2021, subject to any orders that may be passed by the DRT, Jaipur on the petitioner's application(s) in terms of this order.

viii) The petitioner is directed to file before the DRT, Jaipur all documents in possession of the petitioner with regard to title obtained from the respondent no.1 with an advance copy of the same to the counsel appearing on behalf of the respondent no.2.

ix) The petitioner is directed not to create any third party interest in title or possession of the property in question and to maintain status quo with regard to the character of the said property.

x) As and when the DRT-III, Delhi and DRAT, Delhi become operational, the parties will have liberty to approach the DRAT, Delhi for re-transfer of the case from DRT, Jaipur to DRT-III, Delhi.

xi) The aforesaid order is subject to the deposit of a sum of Rs.1,00,000/- by the petitioner with the respondent no.2 on or 19th November, 2021. This amount will be deposited and accepted without prejudice to the rights and contentions of the parties and subject to orders that may be passed by the DRT, Jaipur.

9. It is made clear that this Court has not gone into the merits of the petitioner's case and the aforesaid order is passed only to enable the petitioner to invoke her statutory remedies.

AMIT BANSAL, J NOVEMBER 12, 2021 ak