(2019) 07 DEL CK 0414

In the Delhi High Court

Case No : Civil Writ Petition No. 6921 Of 2019, Civil Miscellaneous Application No. 28784 Of 2019

Surender Talwar APPELLANT

Vs

IDBI Bank RESPONDENT

Date of Decision : 04-07-2019

Acts Referred:
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 14

Citation : (2019) 07 DEL CK 0414

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : Kirti Uppal, Sidharth Chopra, Harsh Kumar, Aditya Awasthi, Rajive R. Raj

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

1. The petitioner has preferred the present petition to assail the order dated 25.6.2019 passed by the Debt Recovery Appellate Tribunal, Delhi (DRAT) in Miscellaneous Appeal No. 295/2019 as well as the order of the Debt Recovery Tribunal in S.A. No. 118/2019.

2. The brief background of the case is that the petitioner claims to be an agreement purchaser of the property bearing no. 62, Third Floor, East End Enclave, Delhi-110092 from the borrower Mr. Harish Aggarwal. The borrower took a loan from the respondent bank and according to the bank the aforesaid property was mortgaged to the bank on 24.11.2014 by deposit of the original title deeds. The agreement between the petitioner and the borrower Mr. Harish Aggarwal is subsequent to the said mortgage. The petitioner states that on account of Mr. Harish Aggarwal not executing the sale deed he has filed a civil suit for specific performance which is pending, wherein the interim order of injunction has been passed against Mr. Harish Aggarwal.

3. The respondent bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') by issuing notice under Section 13(2) of the said Act. Consequent upon non-compliance of the notice, further proceedings have been taken.

4. The petitioner filed the S.A. No. 118/2019 before the Debt Recovery Tribunal-II, Delhi seeking stay of the operation of the order dated 13.5.2019 passed by the Ld.CMM (East), Karkardooma Courts, Delhi under Section 14 of the SARFAESI Act to appoint a receiver to take possession of the said property. By the detailed impugned order that petition was rejected by Ld. DRT. Ld. DRAT, while issuing notice in the petitioner's appeal, vide the impugned order has not granted any interim stay, and consequently, the present petition has been preferred.

5. Mr. Kirti Uppal, learned senior counsel for the petitioner submits that since the stay was obtained by the petitioner against the borrower, the possession of the property could not be taken by the receiver. He also submits that the petitioner is the bona fide purchaser without notice for valuable consideration of the said property, and therefore, the bank is not entitled to proceed to recover its dues by resort to proceedings under the SARFAESI Act in relation to the said property. On a pointed query Mr. Uppal states that the original title deed is not with the petitioner, and the petitioner claims that the same was shown to the petitioner at the time of execution of the agreement to sell. Ld. counsel for the respondent bank submits that the original title deeds stand deposited with the respondent bank.

6. We do not find any merit in either of the aforesaid submissions of the petitioner. The stay obtained by the petitioner against the borrower in the civil suit filed for specific performance does not bind the respondent bank, or the receiver appointed in the proceedings under the SARFAESI Act. Moreover, the claim of the petitioner to be a bona fide purchaser without notice for valuable consideration also appears to be doubtful, since the petitioner, admittedly, is not possessed of the original title deed which any purchaser would secure-to ensure that the property has not been encumbered when the agreement is entered into. Whatever claims petitioner may have against the borrower, the same certainly cannot come in the way of the respondent bank in recovering its dues by proceedings in respect of the mortgaged property.

7. Dismissed.