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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 22nd August, 2024**

+ W.P.(C) 11543/2024 & CM APPL. 47866/2024

ASHISH KUMARPetitioner

Through: Mr. Ashish Chauhan, Advocate.

versus

TATA CAPITAL FINANCIAL SERVICES LTD & ORS.

.....Respondents

Through: Mr. Arman Roop Sharma and
Mr. Rahul Gupta, Advocates
for R-1.

Mr. Mukul Bhimani, Advocate
for Respondent No.4.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. An affidavit has been filed on behalf of the petitioner evidencing service of notice of the writ petition along with the documents having been served upon the respondent No.1. Learned counsel for the respondent No.1 puts appearance today as well.

2. Having heard the learned counsels for the parties and in continuation of previous order dated 21.08.2024, the petitioner is invoking writ jurisdiction of this Court for issuance of appropriate writ, order or directions against the respondent No.1 with regard to the property in question seeking quashing of the notice dated 02.08.2024 issued by Court Receiver in terms of order dated 26.07.2024 of the learned Chief Judicial Magistrate, South-West,



Dwarka Courts, New Delhi [“CJM”] in the proceedings under Section 14(2) of the SARFAESI Act¹.

3. At the outset, learned counsel for the respondent No.1 has urged that this Court has no jurisdiction to pass any directions primarily for the fact that the writ petition is filed against an NBFC², for which he has invited reference to decision by the Supreme Court in the case of **Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir**³.

4. Learned counsel for the petitioner has alluded to decision in the case of **PHR Invent Educational Society v. UCO Bank**⁴ so as to canvass the point that the writ petition is maintainable.

5. Shorn of unnecessary details, it is the case of the petitioner that he availed a home loan from respondent No.4/NBFC in terms of sanction letter dated 26.02.2022 for buying the subject property and they had been diligently making payment of EMIs⁵ and finally a sale deed dated 09.05.2024 was registered in his name (Annexure-2).

6. The grievance of the petitioner is that out of blue, he has found notice pasted at the subject property dated 02.08.2024 whereby purportedly pursuant to proceedings in the complaint case No. 22032/2024 an intimation is given that the physical possession of the property shall be taken over by the respondent No.1 on 23.08.2024.

7. Learned counsel for the petitioner has urged that a fraud has been played upon the petitioner inasmuch as now he has been able to

¹ Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

² Non-Banking Financial Company

³ (2022) 5 SCC 345

⁴ (2024) SCC OnLine SC 528

⁵ Equal Monthly Installments



secure a copy of another registered sale deed dated 23.01.2023, which would suggest that respondent No.5 Mr. Amit Gupta and respondent No.6 Ms. Pooja Gupta alleged to have sold the subject property to Mohd. Furkan Qureshi S/o Mr. Rahis Qureshi against whom SARFAESI proceedings have been instituted by way of complaint case No. 22032/2024 leading to order dated 26.07.2024. It is vehemently urged that personal photographs of respondents No. 5 and 6 are different than the sale deed which has been executed in his favour and a fraud has been practiced upon him.

8. Learned counsel for the respondent No.1 apart from preliminary objection referred above, has pointed out in the meanwhile complaints have been lodged not only by them but also by petitioner with the police for the alleged fraud and the matter obviously would be investigated in accordance with the law.

9. The core issue is as to which of the sale deeds are genuine and can be relied upon by which of the parties.

10. Be that as it may, the present writ petition against NBFCs cannot be entertained. The petitioner being an aggrieved party can approach the Debt Recovery Tribunal [“DRT”] in terms of Section 17 of the SARFAESI Act. Hence, the present writ petition is dismissed without prejudice.

11. The pending application also stands disposed of.

12. As requested a copy of this order be given *dasti* under the signatures of the Court Master.

DHARMESH SHARMA, J.

AUGUST 22, 2024

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