

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

% **Reserved on : 16<sup>th</sup> November, 2021**  
**Decided on : 09<sup>th</sup> December, 2021**

+ **CM(M) 647/2021**

HOUSING DEVELOPMENT FINANCE  
CORPORATION LTD.

..... Petitioner

Through: Mr. Sanjeev Bhandari, Mr. Rishabh  
Sahu, Mr. Sushant Bali and  
Ms. Anvita Bhandari, Advocates

Versus

RAKESH KUMAR & ORS.

..... Respondents

Through: Mr. Mahipal Singh Rajput, Advocate  
for respondents No.1 and 2  
None for respondent No.3.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

1. The present petition under Article 227 of the Constitution of India impugns orders passed by the Chief Metropolitan Magistrate (CMM), South West, Dwarka Courts, New Delhi, being (i) the order dated 30<sup>th</sup> March, 2021, whereby a further period of ninety days has been granted to the court appointed receiver for complying with the order dated 15<sup>th</sup> October, 2019, whereby the said receiver was appointed to take possession of the secured asset; and, (ii) the order dated 17<sup>th</sup> August, 2021, whereby the Court of the CMM has failed to pass any orders qua the extension of time in view of the status quo orders passed by the Additional District Judge (ADJ)-01, South

West, Dwarka Courts, New Delhi in the suit filed by the respondent no.3 against the respondents no.1 and 2.

2. Notice was issued in the said petition on 23<sup>rd</sup> September, 2021. Reply has been filed on behalf of the respondents no.1 and 2 and on behalf of the respondent no.3. Oral submissions were made by the counsel for the petitioner and the counsel for the respondents no.1 and 2 on 10<sup>th</sup>, 11<sup>th</sup> and 16<sup>th</sup> November, 2021. However, no oral submissions have been made on behalf of the counsel for the respondent no.3. Judgment was reserved on 16<sup>th</sup> November, 2021 and all the parties have filed written submissions.

3. Before dealing with the contentions of the parties, it is deemed apposite to give a brief *résumé* of facts preceding the filing of the present petition.

3.1 A loan of Rs.1,23,86,908/- was disbursed by the petitioner to the respondents no.1 and 2 for purchase of Flat No.302, 3rd Floor, Block-B, Udyog Vihar CGHS Ltd., Plot No.12, Sector-22, Dwarka, New Delhi-110075 (subject property).

3.2 On 31st July, 2021, the said loan account was classified as Non Performing Asset (NPA) and a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was issued on 15th June, 2018. As per the demand notice, a sum of Rs.1,10,14,973/- was payable by the respondents no.1 and 2 as on 30th April, 2018, along with interest.

- 3.3 Upon failure of the respondents no.1 and 2 to pay the aforesaid amount, an application under Section 14 of the SARFAESI Act was filed by the petitioner before the Court of the CMM.
- 3.4 Vide order dated 15th October, 2019, the CMM appointed a court receiver and gave the said receiver three months time to execute the said order.
- 3.5 The court receiver issued a notice on 4th November, 2019 and fixed the date for taking possession of the subject property on 26th November, 2019.
- 3.6 A Securitization Application (SA) under Section 17 of the SARFAESI Act was filed on behalf of the respondents no.1 and 2 before the Debt Recovery Tribunal-I, Delhi (DRT) and the DRT vide order dated 26th November, 2019 passed an interim order in terms of which the taking over of possession of the subject property was deferred.
- 3.7 Vide order dated 10th March, 2021, the DRT clarified that the interim stay granted by the DRT on 26th November, 2019 was valid only till 23rd December, 2019.
- 3.8 On 30th March, 2021, the petitioner moved an application before the CMM seeking extension of the order dated 15th October, 2019 and the CMM, vide the impugned order dated 30th March, 2021, granted an extension of three months for taking possession of the subject property.

- 3.9 The court receiver issued notice on 31st March, 2021 to the respondents no.1 and 2, stating that possession of the subject property will be taken on 23rd April, 2021.
- 3.10 An application was filed on behalf of the respondents no.1 and 2 before the DRT on 20th April, 2021 seeking stay against the taking of possession. The said application was dismissed by DRT on 20th April, 2021.
- 3.11 Against the order dated 20th April, 2021 of the DRT, the respondent no.2 filed an appeal, which was dismissed by the Debt Recovery Appellate Tribunal (DRAT) vide order dated 13th July, 2021.
- 3.12 In the meanwhile, the respondent no.3 filed a suit for mandatory injunction against the respondents no.1 and 2, being CS No. 430/2019, in respect of the subject property, where the petitioner was not impleaded as a party. In the said suit, vide order dated 12th July, 2021, the Court of ADJ-01, South West, Dwarka Courts, New Delhi directed parties to the suit to maintain status quo qua the suit property. The said order was extended from time to time.
- 3.13 In light of the said order, the court appointed receiver did not take possession of the property.
- 3.14 The petitioner filed an application before the CMM seeking, inter alia change of court appointed receiver and extension of time for compliance of the order passed by the CMM under Section 14 of the SARFAESI Act.

3.15 Vide the impugned order dated 17th August, 2021, the CMM observed that once a status quo order has been passed by the Court of ADJ-01, South West, Dwarka Courts, New Delhi in respect of the subject property, it would be against judicial discipline to pass any further order in the proceedings before the CMM.

4. Aggrieved by the aforesaid order, the present petition under Article 227 of the Constitution of India has been filed by the petitioner.

5. The grievance of the petitioner in respect of the impugned order dated 30<sup>th</sup> March, 2021 is that ninety days' further time has been granted to the court receiver for execution of the order dated 15<sup>th</sup> October, 2019. It is contended on behalf of the petitioner that there is no jurisdiction vested in the CMM to fix a time limit for compliance of the order passed by the Court of CMM in exercise of its jurisdiction under Section 14 of the SARFAESI Act. It is submitted that Section 14 is an aiding provision to Section 13(4) of the SARFAESI Act, whereby the role of CMM is to assist the secured creditors in taking possession of the secured assets. There is no rationale for providing any time limit. In fact, fixing of a time limit results in filing of applications for extension of the term of the court receiver for execution of orders and defeats the very purpose of speedy recovery.

6. As regards the impugned order dated 17<sup>th</sup> August, 2021, counsel for the petitioner has contended that it is a matter of record that the petitioner was not a party in the civil suit filed by the respondent no.3. Therefore, the status quo order passed in the said suit on 12<sup>th</sup> July, 2021 shall not be binding on the petitioner as also on the CMM. Reliance has been placed on the judgment of the Supreme Court in *West Bengal Housing Board Vs.*

*Pramila Sanfui and Ors.*, (2016) 1 SCC 743 to contend that the temporary or permanent injunction can only be granted against the parties to a suit. To the same effect are the observations of the judgment dated 6<sup>th</sup> September, 2021 passed by High Court of Punjab and Harayana in CM No. 3178-CWP of 2021 in CWP No. 4916 of 2020 titled as *Allahabad Bank, Branch at Industrial Area A, Link Road, Ludhiana through its Chief Manager/Authorised Officer Sh. Nishant Shukla Vs. District Magistrate, Ludhiana and others*, wherein it has been observed that the order passed in the civil suit instituted by a third party in respect of the mortgaged property would not bind the secured creditor, if the said secured creditor was not a party to the civil suit.

7. Insofar as the objections filed on behalf of the respondents no.1 and 2 are concerned, it is contended on behalf of the petitioner that there is no reply to the legal propositions raised in the present petition. The said respondents have only raised an issue that incorrect amount has been claimed by the petitioner and therefore, fraud has been played on the respondents no.1 and 2. It is submitted that the objections with regard to amounts due to the petitioner from the said respondents are not subject matter of the present petition and ought to be taken in appropriate proceedings before the DRT. An SA has already been filed on behalf of the respondents no.1 and 2, which is pending before the DRT. It is further contended that no equity can be claimed by the respondents no.1 and 2 as they have created third party interest in respect of the subject property and also left the country.

8. As regards the reply filed on behalf of the respondent no.3, it is contended on behalf of the petitioner that once again, no submissions have been made with regard to the legal questions raised in the present petition. In the reply filed by the respondent no.3, respondent no.3 claims to be in possession of the subject property on the basis of an Agreement to Sell dated 01<sup>st</sup> November, 2019 and it is stated therein that the respondent no.3 is also willing to settle with the petitioner in respect of the subject property.

9. Counsel appearing on behalf of the respondents no.1 and 2 did not address any arguments on the legal issues raised in the present petition. The only submissions made by the counsel for the respondents no.1 and 2 were that (i) the petitioner committed a fraud on the respondents by claiming amounts more than what were due in terms of the home loan agreement dated 05<sup>th</sup> August, 2011; (ii) the said respondents have always been ready and willing to pay the legitimate amounts due to the petitioner; (iii) a floating rate of interest was applicable for payment of interest for the home loan, but the petitioner charged amounts at a higher rate of interest than what was charged from other customers; (iv) therefore, the respondents no.1 and 2 have paid amounts in excess of what were due from them; (v) false statement of account has been filed by the petitioner before this Court; (vi) no agreement to sell was executed by the respondents no.1 and 2 in favour of the respondent no.3 and that the respondent no.3 has created false and fabricated documents in this regard; and, (vii) the present petition under Article 227 of the Constitution of India is not maintainable. Reliance has been placed on the judgments in *Roshan Deen Vs. Preeti Lal*, (2002) 1 SCC 100, *Ramesh Chanra Sankla Vs. Vikram Cement*, (2008) 14 SCC 58 and

*Shangrila Food Products Ltd. Vs. Life Insurance Corporation of India*, (1996) 5 SCC 54 to contend that jurisdiction under Article 227 of the Constitution of India has to be exercised keeping in mind the principles of equity.

10. Though the counsel for the respondent no.3 was not present to make oral submissions, written submissions have been filed on behalf of the respondent no.3, wherein it is submitted that (i) the petitioner was not impleaded in the suit for mandatory injunction filed by the respondent no.3 against the respondents no.1 and 2 as there was no cause of action against the petitioner; (ii) the rights of the respondent no.3 can only be agitated before a civil court and not before the DRT; (iii) therefore, the respondent no.3 did not implead the petitioner in the said civil suit filed against the respondents no.1 and 2; (iv) the petitioner should have impleaded itself in the civil suit and therefore, the present petition under Article 227 of the Constitution of India is not maintainable; (v) under the provisions of the SARFAESI Act, the bank cannot recover possession from a third party; (vi) the respondent no.3 has already paid Rs.6,50,000/- to the petitioner in respect of the outstanding amount payable by the respondents no.1 and 2 and is willing to pay the balance loan amount to the petitioner with regard to the subject property; and, (vii) despite payment of excess amount, the loan account of the respondents no.1 and 2 has been declared NPA.

11. I have considered the rival contentions.

12. Following issues arise for consideration in the present petition:

***I. Whether there is any requirement or justification to fix a time limit by the CMM for taking possession of the secured asset while exercising jurisdiction under Section 14 of the SARFAESI Act?***

***II. In the context of proceedings initiated under the SARFAESI Act, whether an order passed in a civil suit instituted by a third party in respect of the mortgaged property/secured asset would bind the secured creditor, if the said secured creditor was not a party to the Civil Suit?***

13. Both the questions raised in the present petition are purely legal. I proceed to give my findings on both the aforesaid issues.

***I. Whether there is any requirement or justification to fix a time limit by the CMM for taking possession of the secured asset while exercising jurisdiction under Section 14 of the SARFAESI Act?***

14. Section 14 of the SARFAESI Act is an enabling provision through which the secured creditor may seek the assistance of the CMM in taking physical possession of the secured asset, which is within the jurisdiction of the CMM. There is no provision under Section 14 that requires imposition of any time limit for the aforesaid purpose. The only time limit provided in Section 14 is in the proviso to Section 14, that the CMM is required to pass an order within thirty days from the date the application has been filed before the CMM by the secured creditor. In terms of the second proviso, the said period of thirty days is extendable by a further period of thirty days, and therefore, the maximum period provided is sixty days. There is justification

for providing this time limit, so that the CMM expeditiously decides applications filed under Section 14 of the SARFAESI Act.

15. On many occasions, it is noticed that CMMs, in exercise of jurisdiction under Section 14 of the SARFAESI Act, while appointing court receivers, fix time limits for the said receivers to take possession of the mortgaged property. It has further been noticed that due to a variety of reasons, the physical possession of the property is not acquired in the time limit fixed by the CMM, which results in applications for extension being filed before the CMM. To illustrate, sometimes, the borrower files a petition under Section 17 of the SARFAESI Act before the DRT and the DRT grants an interim stay on taking over possession because of which possession of the secured asset is not taken within the time limit set by the CMM. This results in applications being filed before the CMM for extension of time for taking physical possession of the secured asset.

16. Reference may be made to the judgment dated 15<sup>th</sup> March, 2021 of this Court in CM(M) 210/2021 titled ***Jammu and Kashmir Bank Limited Vs. Trans Asian Industries Exposition Private Limited***, wherein a petition was filed before this Court on account of the CMM declining extension of time for taking over physical possession of the properties of the debtor, as sought by the bank. While allowing the said petition, this Court observed as under:

*“10. This Court has considered the matter. There is no doubt that the time period of 30 days, extendable to 60 days, fixed under section 14 of the SARFAESI Act, are for executing the order of the Chief Metropolitan Magistrate, concerning the taking over of physical possession of the properties by the Bank. However, if the court*

*receivers did not cooperate with the Bank, in lieu of taking over the possession of the said properties, it cannot be held that the Court would be rendered powerless and the order directing the taking over of physical possession would be set at naught.*

*11. In order to secure the asset of the Bank, it is in the interest of justice that the physical possession of the concerned properties, ought to be taken so as to ensure that the asset is not frittered away by the debtor.”*

(emphasis supplied)

17. The aforesaid judgment in *Jammu and Kashmir Bank* (supra) was followed by me in *Sansar Chand Sharma Vs. Kotak Mahindra Bank Ltd., through Chief Manager Sh. G.S. Pander*, 2021 SCC OnLine Del 4911, wherein it was held that there are no provisions of law in terms of which the CMM could not extend the time period granted for taking physical possession of the secured asset and technicalities cannot come to the aid of the borrower to frustrate the object behind the SARFAESI Act.

18. Keeping in mind the objective of the SARFAESI Act i.e., to enable the secured borrowers to take physical possession of the assets of the defaulting borrowers in an expeditious manner, there is no requirement or justification for the CMM to impose time limits for the receiver to take physical possession of the secured asset. This would also curtail unnecessary litigation wherein applications for extension are filed before the CMM and upon the said applications being either allowed or declined by the CMM, petitions are filed before this Court challenging the said decision of the CMM.

19. No submissions have been made by the respondents on this issue. This Court finds merit in the submissions made by the petitioner, that there

is no requirement or rationale in providing a time limit in orders passed by the CMM under Section 14 of the SARFAESI Act, in respect of taking possession of the secured asset. In fact, setting of a time limit by the CMM for taking possession of a secured asset is contrary to the legislative intent.

20. Therefore, the impugned order dated 30<sup>th</sup> March, 2021 passed by the CMM, to the extent that it imposes a time limit of ninety days for the court receiver to take physical possession, is set aside.

***II. In the context of proceedings initiated under the SARFAESI Act, whether an order passed in a civil suit instituted by a third party in respect of the mortgaged property/secured asset would bind the secured creditor, if the said secured creditor was not a party to the Civil Suit?***

21. The legal position with regard to the aforesaid issue has been elucidated by the Division Bench of the Punjab and Haryana High Court in *Allahabad Bank, Branch at Industrial Area A, Link Road, Ludhiana through its Chief Manager/Authorised Officer Sh. Nishant Shukla* (supra). Relevant paragraphs of the judgment are set out below:

***“16. The next issue which comes up for consideration is whether the petitioner bank/secured creditor would be bound by an order passed by a Civil Court in a lis inter se between parties pertaining to the secured asset, not having impleaded the secured creditor? Learned State Counsel has argued that even though the bank is not a party in the said civil suits, but since the Court has restrained interference in the possession of the plaintiff therein, therefore taking over physical possession at the instance of the bank, would amount to infringement of the interim stay orders. In other words, the argument is that the interim stay order in favor of the plaintiff would bind even the bank even if it is not a party to the civil suit.***

**17. We do not find merit in the aforesaid argument. It has been noticed above, that admittedly in none of the two civil suits, the bank is a party defendant. The first civil suit is filed by a plaintiff / tenant and the relief so claimed is also restricted therein to the defendant / landlord and not against the bank. Not only this, the interim order dated 13.07.2018 itself clarifies that the said injunction would not be applicable to third parties which are not impleaded in the said civil suit. The relevant portion of the order dated 13.07.2018 is extracted as under:-**

**" 8. Before parting with this order, it is hereby made clear that due compliance of Order 39 Rule 3 CPC be made forthwith and copy of this order also given for effecting service upon the defendant on filing of PF, RC and copies of documents immediately, jailing which, this order shall cease to have its effect. It is further made clear that nothing contained herein shall be construed so as to effect the rights of other parties, who are not formally arrayed as a party in the present suit."**

*[Emphasis supplied]*

*It is thus more than clear, that the Civil Court in its order has clearly restricted the applicability of the interim protection only to the parties to the said suit. Since the bank is not a party to the said suit as yet and there is no specific restraint order against the bank, the said order, could not have been treated to have restrained respondents Nos. 1 to 3 or the bank to take physical possession of the secured asset, as none of them have been restrained by virtue of the aforesaid order.*

**18. ...It thus clear that an order passed in a civil dispute would bind only those who are impleaded in the suit. The argument of the learned counsel for the applicants I respondent Nos. 1 and 3, that the civil court order would still bind the bank even if it is not a party to the suit, therefore cannot sustain.**

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**20. While applying the aforesaid principles to the facts of the present case, it is clear that since the petitioner bank is not a party to either of the civil suits which have been referred to by respondents Nos. 1 and 3, the interim orders passed therein would not effect the**

*rights of the petitioner. In view of conspicuous absence of the bank in the civil suit, the Civil Court in both the above referred matters shall be construed to be adjudicating the dispute involved between the two private parties in suit and not with respect to the entitlement of the petitioner-secured creditor to enforce the secured asset, even though the suit may involve rights upon secured/mortgaged asset.”*

22. The Division Bench in *Allahabad Bank, Branch at Industrial Area A, Link Road, Ludhiana through its Chief Manager/Authorised Officer Sh. Nishant Shukla* (supra) has, while analyzing the provisions of the SARFAESI Act, observed that if the secured creditor is not a party to a suit initiated by a third party against the borrower, any order passed in the said suit would not be applicable to the secured creditor. I am in respectful agreement with the view taken by the Punjab and Haryana High Court.

23. The Supreme Court in *W.B. Housing Board Vs. Pramila Sanfui*, (2016) 1 SCC 743 has held as under:

*“25. Further, in the instant case, the order of temporary injunction dated 3-7-2006 purportedly granted by consent is also not sustainable in law. The question of consent being given by either the appellant Housing Board or the predecessors-in-interest who are its vendors did not arise as they were not parties to the said suit. It is a well-settled principle of law that either temporary or permanent injunction can be granted only against the parties to a suit. Further the purported consent order in terms of Order 39 of the Code of Civil Procedure is only binding as against the parties to the suit. In such a case, the order of the Subordinate Judge to grant police protection against the appellant Housing Board which is enjoying the property is erroneous in law and is liable to be set aside.”*

(emphasis supplied)

24. In the present case, no submissions have been made by the respondents on this legal proposition. In fact, the respondents no.1 and 2

have stated in their reply that they did not execute any agreement to sell in favour of the respondent no.3 and therefore, the suit filed by the respondent no.3 is frivolous.

25. The order dated 12<sup>th</sup> July, 2021 was passed in a civil suit in a dispute between the respondents no.1 and 2 and the respondent no.3, in which the petitioner was not impleaded as a party. On the one hand, the respondent no.3 has stated in his reply that there was no occasion to implead the petitioner as the dispute was between the respondent no.3 and the respondents no.1 and 2, but in the same reply it has been stated that if the petitioner had any grievance with the order passed in the civil suit, it should have filed for impleadment in the aforesaid civil suit. These are clearly contradictory stands taken by the respondent no.3. In any event, there is no merit in the plea of the respondent no.3, that the petitioner should have moved an application for impleading itself in the civil suit.

26. In the suit filed by the respondent no.3 against the respondents no.1 and 2, the order of status quo passed by the ADJ itself states as under:

*“...parties are directed to maintain status-quo with regard to the possession of the suit property”.*

27. It is clear from a reading of the aforesaid order that the said status quo would only operate between the parties to the suit. In other words, this would not operate vis-à-vis the petitioner, who was admittedly not a party in the said suit.

28. The CMM, while exercising jurisdiction under Section 14 of the SARAFESI Act could not have taken cognizance of the aforesaid order

passed in the civil suit. The scope of the proceedings before the CMM are entirely different from the proceedings in the civil suit. The scope of the proceedings before the CMM are under the provisions of the SARFAESI Act, which is a specialized law enacted to enable a secured creditor to obtain possession of the secured asset in an expeditious manner. Scope of the proceedings in the civil suit are entirely different as they are in the context of *inter se* disputes between the respondent no.1 and 2 on one hand and the respondent no.3 on the other hand. Even though the ADJ who has passed the order dated 12<sup>th</sup> July, 2021 in the suit between the respondent no.1 and 2 and the respondent no.3 is higher in judicial hierarchy than the CMM, in view of the position explained above, the CMM could not have declined to exercise jurisdiction vested in the CMM under Section 14 of the SARFAESI Act, by taking into account the order dated 12<sup>th</sup> July, 2021 passed by the ADJ.

29. In any event, in view of Section 34 of the SARFAESI Act, a civil court does not have jurisdiction to adjudicate the rights of a secured creditor or the enforcement of such rights by the secured creditor. Such rights can only be challenged by the borrower or any affected person before the DRT in terms of Section 17 of the SARFAESI Act. Further, in terms of Section 34, no injunction can be granted by any court in respect of any action taken in pursuance of any power under the SARFAESI Act. Therefore, the civil court, in the present case, did not have any jurisdiction to pass an injunction against the petitioner.

30. The dicta in *Allahabad Bank, Branch at Industrial Area A, Link Road, Ludhiana through its Chief Manager/Authorised Officer Sh. Nishant Shukla* (supra) is squarely applicable in the present case. In view

thereof, the impugned order dated 17<sup>th</sup> August, 2021 passed by the CMM is patently erroneous.

31. Respondents no.1 and 2 have also raised an issue with regard to the amount claimed by the petitioner. They have contended that an exaggerated amount has been claimed by the petitioner in its various notices issued to the respondents, which are clearly in violation of the home loan agreement. All the aforesaid contentions of the respondents no.1 and 2 as well as the contentions of the respondent no.3 with regard to the proceedings initiated by the petitioner for taking possession of the subject property have to be raised before the appropriate forum i.e., the DRT in this case. The aforesaid issues cannot be raised in the present petition filed by the petitioner. The respondents cannot expand the scope of the present petition by raising the aforesaid issues. An SA has already been preferred by the respondents no.1 and 2, being SA 231/2019, which is pending adjudication before the DRT. In fact, the interim application filed by the respondents no.1 and 2 in the said SA for grant of interim relief, has been declined vide order dated 20<sup>th</sup> April, 2021, wherein the DRT has observed as under:

***“7. In the present matter, Ld. counsel for the S. Applicant has firstly made the statement that the S. Applicant is suffering from Corona virus and he is quarantine/home isolation in the property in question. However, later on Ld. counsel for the S. Applicant has changed his own statement and stated that the S. Applicant is not residing in the property in question and only household articles are lying in the property in question. Thus, this Tribunal does not appreciate the conduct of the S. Applicant. Apart from that, in the present matter the S. Applicant has not deposited any amount with the respondent bank as per the order dated 26.11.2019 passed by this Tribunal, and more than Rs.1.05 crores is outstanding in the present matter. As the S. Applicant has failed to point of any illegality or***

***irregularity in the order passed by Ld. CMM and court receiver notice, therefore, no prima facie case exists in favour of the S. Applicant for granting any interim relief. Accordingly, the prayer of the S. Applicant for granting interim relief is liable to be rejected and rejected. Accordingly, the present application is stands dismissed.”***

32. The order dated 20<sup>th</sup> April, 2021 was also challenged by the respondent no.2 by way of an appeal before the DRAT, being Misc. Appeal 122/2021, which was dismissed by the DRAT on 13<sup>th</sup> July, 2021.

33. As regards the submission of the respondents no.1 and 2, that principles of equity have to be invoked while deciding a petition under Article 227 of the Constitution of India, the respondents no.1 and 2 cannot claim any equity in their favour. The subject property was mortgaged by the respondents no.1 and 2 with the petitioner on 05<sup>th</sup> August, 2011. The respondent no.1 and 2 could not have sold the property without redeeming the mortgage. Even otherwise, the demand notice under section 13(2) of the SARFAESI Act was issued by the petitioner on 15<sup>th</sup> June, 2018. In view of Section 13(13) of the SARFAESI Act, the subject property could not have been sold by the respondents no.1 and 2 after receipt of the notice under Section 13(2) of the SARFAESI Act without prior consent of the petitioner.

34. Accordingly, the impugned order dated 17<sup>th</sup> August, 2021, to the extent it holds that since the order dated 12<sup>th</sup> July, 2021 in the civil suit has been passed by a court which is senior in hierarchy of courts to the CMM, it would be against the judicial discipline to pass an order under Section 14 of the SARFAESI Act, is set aside.

35. The CMM is directed to pass fresh orders appointing a receiver to take physical possession of the secured asset without fixing any time limit within which possession may be taken.

36. To summarise, the issues formulated by the Court stand answered in the following manner:

- (i) There is no requirement or justification for the CMM to fix a time limit for taking possession of the secured asset while exercising jurisdiction under Section 14 of the SARFAESI Act;
- (ii) In the context of proceedings initiated under the SARFAESI Act, an order passed in a civil suit instituted by a third party in respect of the mortgaged property/secured asset would not bind the secured creditor, if the said secured creditor was not a party to the Civil Suit.

37. A copy of this judgment be forwarded to the Principal District & Sessions Judges in Delhi for circulation to all the CMMs for compliance in proceedings under Section 14 of the SARFAESI Act.

**DECEMBER 09, 2021**

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**AMIT BANSAL, J.**