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

+ W.P.(C) 1742/2016

SUMIT KOHLI

..... Petitioner

Through: Mr. Sanjay Bhasin, Adv.

Versus

UCO BANK

..... Respondent

Through: Mr. I.S. Chauhan and Mr. Manoj
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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29.02.2016

CM No.7475/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 1742/2016 & CM No.7474/2016 (for stay)

3. The petition impugns the order dated 22nd January, 2016 of the Chief Metropolitan Magistrate (CMM) (West), Tis Hazari Courts, Delhi of dismissal of objections preferred by the petitioner to an application filed by the respondent UCO Bank under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for taking possession of residential flat at first floor measuring 50 sq. yds. part backside portion of built-up property No.WZ-H-82 out of Khasra No.9/15 situated in the area of Village Chowkhandi Colony known as Sant Garh Extension, New Delhi.

4. The petitioner claims to be a tenant in the residential flat aforesaid under an unstamped and unregistered lease deed dated 1st March, 2014 at a rent of Rs.6,000/- per month under the borrower of the respondent Bank for a period of three years ending on 28th February, 2017 and seeks to save his possession of the flat.

5. The learned CMM has not found any merit in the said plea of the petitioner and disbelieved the claim of the petitioner of being a tenant in the premises and hence dismissed the objection.

6. The counsel for the respondent Bank appearing on advance notice states that the respondent Bank has since taken possession of the premises.

7. The learned CMM has rejected the claim of the petitioner on the basis of the lease deed reasoning (i) that the same is of a date after the account of the borrower of the respondent Bank was declared as a Non-Performing Asset (NPA); (ii) that the same required compulsory registration and being unregistered, cannot be looked into; and, (iii) that there was nothing to suggest that the same could not have been prepared only with a view to defeat the application of the respondent Bank for taking possession.

8. Besides the said lease deed, the only other documents produced by the petitioner to contend being in possession of the premises were a copy of his Permanent Account Number (PAN) Card and a copy of his Electoral Card at the said address. As far as the PAN Card, at least copy of which produced before this Court does not indicate the date of issuance thereof. With respect to the Electoral Card, the learned CMM has reasoned that the same could not be a proof of possession, inasmuch as the same was issued on 14th November, 2005 i.e. much before the date when the petitioner claimed to

have come into possession of the premises as a tenant and there was no plea of the petitioner being in possession of the premises since before then.

9. The counsel for the petitioner here states that in fact the petitioner was earlier the owner of the said flat and had sold the same to the borrower of the respondent Bank and subsequently became a tenant in the premises.

10. However, no document of sale of the property has been filed.

11. The counsel for the petitioner then contends that when the receiver earlier appointed by the Court of the CMM on the application under Section 14 of the SARFAESI Act for taking over possession of the property has reached the spot, the petitioner was found in possession of the premises and the same is proof of the petitioner being in possession.

12. However, it is not disputed that the said receiver had visited the premises after serving notice to the borrower.

13. In this view of the matter, the fact that the petitioner was reported by the receiver to be in possession would be of no avail.

14. I have further enquired from the counsel for the petitioner as to what use the petitioner is putting the premises to.

15. The counsel for the petitioner after enquiring from the petitioner states that the petitioner along with his wife, one son aged about seven years and one daughter aged about 14 years is residing therein.

16. On further enquiry, it is informed that the children of the petitioner are studying in DAV School, Tilak Nagar, Delhi. On being asked, whether the address of the children in the School is of the said premises, no reply is forthcoming.

17. The statement made today of the petitioner being earlier the owner explains the address of the petitioner of the said premises on the Electoral Card and on the PAN Card issued in the year 2005 but the same are no proof of, after the sale of the flat to the borrower of the respondent Bank, continuing in the premises as a tenant.

18. On enquiry, it is informed that the flat is supplied with electricity and water meters but the proof of payment thereof by the petitioner has not been furnished.

19. The petitioner present in person states that he has not given the address of the subject premises anywhere in his records.

20. In these circumstances, no error is found in the view taken by the learned CMM.

21. The petition is misconceived and is dismissed.

22. The counsel for the petitioner has however also drawn attention to the fact that the learned CMM by the impugned order appointed the Metropolitan Magistrate (MM) having jurisdiction over the property as the receiver and the said MM delegated the powers as receiver to the Station House Officer (SHO) of the concerned area and it is the SHO who took possession. It is his contention that the MM could not have delegated his authority as a receiver.

23. Some merit is found in the said objection. It *prima facie* appears that a judicial officer cannot be appointed as receiver. The same will however be taken up on the administrative side.

24. The counsel for the respondent Bank is also requested to, in future, while making such applications, make proper submissions before the CMM

in this regard as to the feasibility of appointment of a Judicial Officer as a receiver.

25. A copy of this order be also placed before Hon'ble the Chief Justice for issuance of administration instructions, if any required in this regard.

No costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 29, 2016

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