$~3

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

Date of Decision:- 22.04.2021

\+ W.P.(C) 4539/2021

SHEIKH M. MAROOF ..... Petitioner

Through Mr. Sanjiv Kakra, Sr. Adv with Mr. Anand Agrawal, Adv

versus

PHOENIX ARC PVT LTD & ORS. .... Respondent

Through Mr. Amit Kumar Chadha, Sr Adv, Mr. Suresh Dutt Dobhal, Adv, Mr. Nirmal Goenka, Adv for Respondent No. 1 / Phoenix ARC

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

CM APPL. 13901/2021

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 4539/2021 & CM APPL. 13900/2021

1. The petitioner has preferred the present writ petition to seek the following reliefs:-

> *"(a) set aside order dated 23.03.2021 passed by the Hon'ble Debts Recovery Appellate Tribunal, New Delhi thereby dismissing application Miscellaneous Appeal No. 128 of 2020 titled as Sheikh M. Mahroof Versus Phoenix ARC and others pending before the Hon'ble Debts Recovery Appellate Tribunal; dismissing securitisation application no. 78 of 2020 pending before the learned Debts Recovery Tribunal; and also forfeiting the amount of Rs.30.00 lakhs deposited by the Petitioner along with interlocutory application no. 66 of 2021 seeking extension*

of time to deposit a sum of Rs.2.00 crores directed to be deposited vide order dated 09.11.2020;

(b) restore Miscellaneous Appeal No. 128 of 2020 titled as Sheikh M. Mahroof Versus Phoenix ARC and others, pending before Hon'ble Debts Recovery Appellate Tribunal. with direction to be heard and decide the same on merits;

(c) restore Miscellaneous Securitisation Application No.78 of 2020 titled as Sheikh M. Mahroof Versus Phoenix ARC and Others, pending before the learned Debts Recovery Tribunal, with direction to be heard and decide the same on merits;

(d) order for the refund of Rs.30.00 lacs deposited by the petitioner, with the Hon'ble Debts Recovery Appellate Tribunal, Delhi.

2. Respondent no.1/Phoenix ARC Pvt. Ltd., as the assignee of the loan granted by the Canara Bank to the respondent nos.2 and 3 *i.e.* ZAZ Mustang, a partnership firm and ZAZMAN Exports another partnership firm, has been pursuing its remedies - under both the SARFESI Act and the RDDBFI Act. The respondent no.1 sought to invoke its powers under the SARFEASI Act, in order to take possession of the mortgaged properties *i.e.*, two flats - being Flat No.3, Taj Apartments, situated on Plot No.2B, Rao Tula Marg, Sector 12, R.K. Puram, New Delhi and Flat No.3, Taj Apartments, situated on Plot No.2C, Rao Tula Marg, Sector 12, R.K. Puram, New Delhi. The petitioner claims that he is a tenant in these two flats, and on that premise sought to move a Securitisation Application (S.A.) before the DRT under Section 17 of the SARFEASI ACT. The petitioner also sought protection against dispossession before the DRT.

3. The DRT did not find any merit in the said claim for interim relief on the premise that the petitioner had not been able to establish, even *prima*

facie, that he is a tenant in the said property, as the petitioner did not produce any rent receipts, or other record to establish that the petitioner is a tenant, or had been paying any rent. Moreover, the petitioner is the brother-in-law of the partner of the debtor firms. Consequently, the DRT dismissed his application to seek stay against dispossession. This led to the petitioner preferring Miscellaneous Appeal (M.A.) No.128/2020 before the DRAT. When the matter came up before the DRAT on 09.11.2020, the petitioner again pressed for stay of dispossession; wherein, the DRAT granted a conditional stay against the dispossession to the petitioner, by directing that he should pay Rs. 2 crores to the Receiver, in case the Receiver approaches the petitioner to take physical possession of the properties. The dues against the respondent nos.2 and 3 herein were to the tune of Rs.4.55 crores in the loan account in question, whereas the total liability of the respondent nos.2 and 3 is stated to be to the tune of Rs.185 crores. Thus, the petitioner was not immediately dispossessed on account of the passing of the said conditional order of stay by the DRAT.

4. However, the petitioner was not satisfied with the aforesaid order passed by the DRAT and preferred W.P.(C) No. 9329/2020 before this Court to assail the order dated 09.11.2020. The said writ petition was rejected by this Court on 24.11.2020, by observing that the order passed by DRAT appears to be equitable and tests the *bona fides* of the petitioner.

5. Despite the said order, the petitioner did not deposit the said amount of Rs.2 crores, and once again approached the DRAT, seeking extension of time on the ground that the petitioner was making arrangements for the amount and, in the interregnum, the petitioner deposited an amount of Rs.30

lakhs with the DRAT. However, the DRAT rejected the application of the petitioner.

6. Thereafter, the order refusing the grant of extension of time was assailed by the petitioner before this Court in W.P.(C) No. 1731/2021; however, the said writ petition was also rejected by this Court on 10.02.2021.

7. Since the petitioner did not deposit the amount of Rs.2 crores, the petitioner was issued a show cause notice on 17.12.2020 on the ground that the petitioner had disobeyed the interim direction issued by DRAT and therefore, the petitioner was required to show cause as to why action should not be taken against him. It is in pursuance of the said show cause notice, that the impugned order has been passed by the DRAT.

8. The DRAT has held the conduct of the petitioner to be contumacious by placing reliance on the judgment of the Supreme Court in ***M/s Prestige Lights Limited v. State Bank of India [Civil Appeal No.3827/2007,*** since the petitioner had availed of the interim protection granted by the DRAT, and had not complied with the conditions on which the same was granted. Resultantly, the DRAT has not only dismissed the M.A. No.128/2020 pending before it, but has also forfeited the amount of Rs.30 lakhs deposited by the petitioner and directed the dismissal of the SA under Section 17 of the SARFEASI Act preferred by the petitioner, which was pending before the DRT.

9. We may notice that the DRAT has taken note of the fact that even before the DRT, the petitioner had furnished an undertaking for handover of the physical possession of the properties in question, but the said

undertaking had been flouted. The explanation furnished by the petitioner, when confronted with the said undertaking was that he had given the undertaking since he had no option, and if the same had not been given, he would have lost the possession of flats in question.

10. The submission of Mr.Kakra, learned senior counsel for the petitioner, is that the DRAT, at the highest, could have rejected the M.A.128/2020, which arose from an interim order passed by the DRT rejecting the petitioner's application to seek stay against dispossession. The petitioner already stands dispossessed from the said properties as noticed in the impugned order. He submits that firstly, the DRAT could not have forfeited the amount of Rs.30 lakhs deposited by the petitioner, since it had vide its earlier order dated 03.02.2021, observed that the petitioner may withdraw the said amount; and secondly, the DRAT could not have directed the dismissal of the petitioner's S.A. under Section 17 of the SARFEASI Act pending before the DRT, since the petitioner is neither the borrower nor the guarantor in respect of the loan accounts. Mr. Kakra has submitted that the DRAT had no jurisdiction to direct dismissal of the S.A. as the same had not been adjudicated on merits, and it is for the DRT to deal with the same on merits.

11. In support of his submissions, he sought to place reliance on ***Prem Kumar Gupta v. Bank of India & Ors. [2015 SCC Online Del 8232].*** He has also placed reliance on the decision of this Court in ***Padam Singhee & Anr. v. M/s Svogl Oil, Gas and Energy Ltd. & Ors. [W.P.(C)9616/2018]*** decided on 18.09.2018, wherein this Court had ruled on the extent of jurisdiction exercised by the DRAT. He also places reliance on ***Standard***

Chartered Bank v. Dharminder Bhohi & Ors. [2013 (15) SCC 341] in support of his aforesaid submissions.

12. We have considered the submissions of Mr.Kakra in the light of the decisions relied upon by him.

13. No doubt, the petitioner is not the borrower or the guarantor in the loan account; however, he was occupying valuable properties of the borrowers, which are mortgaged for the purpose of liquidation of the loan account of the respondent nos. 2 & 3. Though he claims to be a tenant in the premises, he has not been able to produce any creditable material before the Tribunal in support of the said claim. The Tribunal, *prima facie*, did not find any merit in the petitioner's submission that he is a tenant.

14. Pertinently, and admittedly, the petitioner gave an undertaking to the DRT that he would deliver possession of the two properties in question, which he did not honour. It is no answer for the petitioner to say that the undertaking was given only to avoid dispossession, when his intention was not to honour the same. This itself reflects on the dishonesty of the petitioner and is a ground, in itself, to completely non-suit him. The DRAT granted protection to the petitioner on the condition of his depositing Rs.2 crores when he is sought to be dispossessed by the receiver appointed under the SARFEASI Act. He once again failed to comply with the condition and continued to remain in the possession since the passing of the order by the DRAT on 09.11.2020. If he were not so minded to deposit the amount, he should have up front informed the DRAT about the same, in which case the DRAT would not have granted the protection in the first place. However, he exploited the said indulgence granted by the DRAT and, thereafter,

preferred a writ petition which too came to be dismissed, as aforesaid. Even thereafter, he went back to the DRAT to seek extension of time; that application was rejected and yet again, he came to this Court only to face dismissal of his second writ petition. The result of the machinations adopted by the petitioner was that he was able to prolong his dispossession from the properties, thereby preventing the sale of the said properties by respondent no.1 for a period of about five months. Mr.Chadha, who appears for the respondent no.1, points out that the endeavour of the respondent no.1 to take possession has been blocked by the borrowers and the petitioner, for the last about 10 years.

15. In the aforesaid context, the petitioner was issued the show cause notice on 17.12.2020, which forms the basis of the impugned order. The learned DRAT has taken note of the aforesaid developments in the impugned order and placed heavy reliance on ***M/s Prestige Lights Limited*** *(supra)* decided on 20.08.2007. We may extract the observations of the Supreme Court in ***M/s Prestige Lights Limited*** *(supra)*, which had been also relied upon by the DRAT in the impugned order: -

> "*17. But there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent-Bank that having obtained interim order and benefit thereunder from this Court, the appellant- Bank has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, it had taken benefit of the order of interim relief and on the other hand, did not comply with it and failed to pay instalments as directed. Neither it raised any grievance against the condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the*

benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.

18. As already noted, stay of dispossession was granted by this Court on mention being made on April 28, 2005. The matter was then notified for admission- hearing on May 6, 2005. A two-Judge Bench of which one of us was a party (C.K. Thakker, J.) passed the following order;

> *"Permission to file additional documents is granted.*
> *Issue notice.*
> *Subject to the petitioner's depositing an amount of Rs.20 lakhs per month in this Court, there will be stay of the operation of the impugned order. First of such payment shall be made by 6th June, 2005 and the subsequent payments by 6th of each succeeding month. In default of payment of any one instalment, the stay will stand vacated."*

19. From the above order, it is clear that notice was issued to the other side and stay granted earlier was ordered to continue on the appellant's depositing a sum of Rs. 20 lakhs per month in this Court. It was also made clear that first of such payment should be made by 6th June, 2005 and subsequent payments by 6th of each succeeding month. A default clause was also introduced in the order that if such payment would not be made, the stay would stand vacated. It is an admitted fact that the order has not been complied with and no payment as per the order has been made by the appellant-Company to the respondent- Bank. The said fact has also been reflected in the order of this Court passed on July 25, 2007, wherein it was stated;
"It is recorded that the stay is transgressed by reason of the admitted non- compliance with the order dated 6th May, 2005".

20. The original order was of May, 2005 and the matter was heard finally in May, 2007. Thus, about two years had passed and the order has been thwarted with impunity. In our opinion, therefore, the learned counsel for the respondent-Bank is right that such appellant does not deserve sympathy from the Court.

21. An order passed by a competent court interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the Court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a 'drastic step' and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but some time such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding the terms and conditions on which a relief is granted by the Court in his favour.

22. In the leading case of Hadkinson v. Hadkinson, (1952) 2 All ER 567, the custody of a child was given to the mother by an interim order of the court, but she was directed not to remove the child out of jurisdiction of the Court without the prior permission of the Court. In spite of the order, the mother removed the child to Australia without prior permission of the Court. On a summons by father, the Court directed the mother to return the child within the jurisdiction of the Court. Meanwhile, an appeal was filed by the mother against that order.
A preliminary objection was raised by the father that as the appellant was in contempt, she was not entitled to be heard on merits.

23. Upholding the contention and speaking for the majority, Romer, L.J. observed;

"I am clearly of the opinion that the mother was not entitled, in view of her continuing contempt of court, to prosecute the present appeal and that she will not be entitled to be heard in support of it until she had taken the first and essential step towards purging her contempt of returning the child within the jurisdiction.

24. In a concurring judgment, Denning, L.J. also stated;

"The present case is a good example of a case where the disobedience of the party impedes the course of justice. So long as this boy remains

in Australia, it is impossible for this court to enforce its orders in respect of him. No good reason is shown why he should not be returned to this country so as to be within the jurisdiction of this Court. He should be returned before counsel is heard on the merits of this case, so that, whatever order is made, this court will be able to enforce it. I am prepared to accept the view that in the first instance the mother acted in ignorance of the order, but nevertheless, once she came to know of it, she ought to have put the matter right by bringing the boy back. Until the boy is returned, we must decline to hear her appeal." (emphasis supplied)

25. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor the court will refuse to hear him in all circumstances. The normal rule is that an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptions is that the party may appeal with a view to setting aside the order on which his alleged contempt is founded. A person against whom contempt is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it.

26. In Gorden v. Gorden, (1904) 73 LJ 41 : 90 LT 597 : 16 Dig 90, 1128, Cozens Hardy, L.J. put the principle succinctly in the following words; ".I desire expressly to limit my judgment to a case in which the [party in contempt] is saying that the order complained of is outside the jurisdiction of the court, as distinguished from the case of an order which, although it is within the jurisdiction of the court, ought not, it is said, to have been made."

27.Lord Denning made the following pertinent observations in Hadkinson;
"It is a strong thing for a court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is step which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance."

36. For the foregoing reasons, we hold that by dismissing the petition in limine, the High Court has neither committed an error of law nor of jurisdiction. The appellant-Company is not entitled to any relief. Though the respondent-Bank is right in submitting that the appellant has suppressed material facts from this Court as also that it has not complied with interim order passed by the Court and it has, therefore, no right to claim hearing on merits, we have considered the merits of the matter also and we are of the considered view that no case has been made out for interference with the action taken by the respondent-Bank or the order passed by the High Court.

37. The appeal, therefore, deserves to be dismissed and is accordingly dismissed with costs."(emphasis supplied)

16. Thus, a Court which has competence to pass an order – interim or final, is entitled to take notice of its disobedience and in a given case the "drastic step" of denying a hearing to the party disobeying the order may be taken in the larger interest of justice, when the party obtaining interim relief, intentionally or deliberately, flouts such order by not abiding with the terms and conditions on which the relief is granted by the Court in his favour.

17. In the present case, as noticed hereinabove, the petitioner himself furnished an undertaking before the DRT that he would hand over the physical possession of the properties in question. He failed to honour that undertaking. He cannot be heard to argue that even though he may have given the undertaking, and on that premise warded off his dispossession from the properties in question, and thereby taken respondent No.1 as well as the Tribunal for a ride, he should be heard on merits on his Securitization Application, particularly when he is not able to make out

even a *prima facie* case to establish the so-called status of a tenant in the said properties. The DRAT, while adjudicating on the show cause issued to the petitioner, has taken notice of the aforesaid conduct of the petitioner, and it is for the aforesaid reasons that not only his Miscellaneous Appeal pending before the DRAT, but also his S.A. pending before the DRT was directed to be dismissed.

18. The decisions relied upon by the petitioner, in our view, are not attracted in the facts of the present case. ***Prem Kumar Gupta*** *(supra)* was a case where the petitioner, who had not been served earlier, was directed to deposit 25% of the amount demanded by the applicant bank when he appeared, even without adjudication of the Original Application. His application for review of the said order was also rejected by the Tribunal.

19. A similar direction was issued against a co-respondent to the Original Application, which was assailed before the DRAT. The said direction for deposit of 25% of the amount claimed was suspended by the DRAT in the appeal of the co-respondent. Though the petitioner had also preferred an appeal to seek the same relief, before the said relief could be granted, the matter came up before the DRT. Since the petitioner had not made the deposit, he was issued a notice to show cause as to why appropriate proceedings should not be initiated against him for defying the orders of the Tribunal. The petitioner then preferred a Writ Petition before this Court. This Court granted interim protection to him with a direction to DRAT to consider the petitioner's prayer for stay on an early date. The DRAT, however, dismissed the appeals preferred by the petitioner and the co-respondent against the direction of the DRT to

deposit 25% of the amount claimed in the Original Application. That order of the DRAT was the subject matter of the Writ Petition before the High Court, on which the aforesaid decision in ***Prem Kumar Gupta*** *(supra)* came to be passed.

20. It was in the aforesaid context that this Court disapproved the observations of the DRAT that Section 19(25) of the RDDBFI Act confers upon the DRT, a jurisdiction akin to the one vested in the High Court under Section 482 of the Cr. P.C. This Court held that the Tribunal is not vested with a general power to direct the defendant to furnish security, or in case of a default on his part, to order attachment of his property. There is no power conferred by the statute on the Tribunal to ask the defendant to deposit the amount claimed in the application under Section 19, before the claim is adjudicated upon.

21. Thus, it would be seen that ***Prem Kumar Gupta*** *(supra)* was not a case dealing with the conduct of a party which was found to be contumacious or dishonest – as in the present case.

22. ***Padam Singhee*** *(supra)* was a case where the DRT, in the Original Application filed by the Asset Reconstruction Company, directed the petitioner before the Court – respondent before the DRT, to take its prior permission before leaving the country. Against that order, the petitioner preferred an appeal before the DRAT. The DRAT, instead of dealing with the appeal, directed the petitioner to show cause as to why appropriate orders under Section 19(13)(A) and 19(18)(25) of the Recovery of Debts and Bankruptcy Act, 1993- including appointment of Receiver for the assets, be not passed, and further directed the petitioner

to furnish details of their bank accounts and restrain them from operating any of their bank accounts. The petitioner then decided to withdraw its appeal before the DRAT. Despite the appeal being dismissed as withdrawn, the DRAT continued the proceedings with respect to the show cause notice issued by it suo moto on the ground of public interest. It was in this background that this Court disapproved of the action of the DRT/ DRAT. While doing so, this Court relied on ***Standard Chartered Bank*** *(supra)*. In ***Standard Chartered Bank*** *(supra)*, the Supreme Court had observed that the Tribunal is required to function within the statutory parameters, and it does not have the inherent powers, and it is limpid that Section 19(25) confers limited powers.

23. The aforesaid decisions, in our view, are not attracted in the facts of the case taken note of hereinabove. The conduct of the petitioner – both before the DRT and the DRAT which we have taken note of hereinabove, was such that it disentitled the petitioner to a hearing.

24. The petitioner gave an undertaking to the DRT, which he dishonoured, and his only excuse was that if he would have not given the undertaking to vacate the properties, he would have lost the possession of the properties in question. This means that when he gave the undertaking, he did not even intend to fulfil the same. This could well amount to cheating. Similarly, before the DRAT, he obtained a conditional interim order of protection against dispossession and failed to fulfil the condition, and continued to enjoy the interim protection granted by the DRAT. In our view, the decision in ***M/s Prestige Lights Limited*** *(supra)* is squarely attracted in the facts of the present case, and the three decisions relied

upon by the petitioner, do not deal with the fact situation similar to the one with which we are concerned.

25. For the aforesaid reasons, we are not inclined to exercise our discretionary jurisdiction of judicial review in favour of the petitioner. We, accordingly, dismiss the present petition, along with the pending applications, with costs quantified at Rs. 2,00,000/- to be paid to the Delhi High Court (Middle Income Group) Legal Aid Society within two weeks.

26. Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 22, 2021
n/sr