

**Debts Recovery Tribunal-I, Delhi**

**SA/610/2023**

**PRITAM DASS AND ANR Vs IIFL HOME FINANCE LTD**

28.02.2024

Item no.1

Present: Ms. Shivani Verma, Ld. counsel for the applicant.

Mr. Nishant Awana, Ld. counsel for the respondent FI.

This matter is taken up by this Tribunal through video conferencing/hybrid.

2. The present securitization application has been filed by the applicant praying therein to restrain the respondent FI / court receiver from taking physical possession of the property bearing no.596/4-A/9-Q/1 (old) and new no.IX/5741, measuring 52 sq.yds. with roof rights, bearing plot no.11-B, out of khasra no.184, situated at Gali no.6, Subhash Mohalla no.2, Gandhi Nagar, in the area of Village Seelampur, Illaqa Shahdara, Delhi-110031 (hereinafter referred as the property in question) on 28.02.2024.

3. It has been submitted on behalf of the applicant that the applicant is a bonafide owner of the property in question by virtue of registered sale deed dated 14.05.2012 purchased from one Jagdish Chand s/o Larja Ram and the applicant has nothing to do with the loan of the respondent no.1 FI. It has further been submitted that the entire actions of the respondent FI are bad in law, accordingly, it has been prayed for restraining the respondent FI / court receiver from taking the physical possession of the property in question on 28.02.2024.

4. On the other hand, Ld. counsel for respondent FI has vehemently opposed for granting any interim relief to the S. applicant stating that the respondent FI is valid mortgagee of the property in question since the year 2021 on the basis of registered gift deed dated 03.12.2021. It has further been submitted that the loan facility was granted to the borrower/mortgagor/guarantor against the mortgage of the property in question by depositing the original gift deed dated 03.12.2021 executed in favour of Rama Shankar. He further submitted that demand notice and symbolic possession under Sections 13 (2) and 13 (4) of the SARFAESI

*Sd/-*

Act have already been served upon the borrower/guarantor/mortgagor and after declaration of the account as NPA, the borrower/guarantor/mortgagor has not cleared the dues of the respondent FI. Accordingly, it has been prayed for rejection of interim prayer of the S. applicant.

5. Heard the rival contentions of both the parties and perused the records.

6. In the present matter, both the applicant as well as respondent no.1 FI are claiming their respective charge over the property in question and the applicant is claiming as the owner of the property in question by virtue of registered sale deed dated 14.05.2012, whereas the respondent FI is claiming that the property in question was mortgaged with them since 03.12.2021 by their borrowers/mortgagors against the sanction of the loan facility by depositing the original gift deed dated 03.12.2021. Apparently, there is default on the part of the borrower/guarantor/mortgagor in paying the dues of the respondent FI and as per the respondent FI, notices under Section 13 (2) and 13 (4) of the SARFAESI Act have been duly served upon the borrower/mortgagor/ guarantor through all modes and after declaration of the account as NPA, the borrower has not cleared the dues of the respondent FI till date.

7. In the above facts and circumstances of the case, this Tribunal is of the prima facie view that the applicant is having prior charge over the property in question since the year 2012 by virtue of registered sale deed dated 14.05.2012, whereas the respondent FI is claiming its charge on the basis registered gift deed dated 03.12.2021. Thus, prima facie case is made out in favour of the applicant and balance of convenience also lies in favour of the applicant for granting interim relief. Accordingly, respondent FI / court receiver is hereby restrained from taking physical possession of the property in question till the next date of hearing. All other issues shall be decided after filling reply, rejoinder and evidences by the parties.

Now, list this case on 20.05.2024 before the Ld. Registrar for completion of pleadings.

*Sd/- 20.05.24*  
(GOVIND BALLABH SHARMA)  
PRESIDING OFFICER,  
DRT-I, Delhi