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

+ **O.M.P. 145/2004**

**NIRMALA JAIN**

..... Petitioner

Through: Mr. Sandeep Jain & Mr. Sanjay Jain,  
Petitioner No.2 & 3 in person (M-  
9911172271).

versus

**G.S.BATRA**

..... Respondent

Through: Mr. Rajiv Nayyar, Senior Advocate  
and Mr. Sachin Datta, Senior  
Advocate with Mr. Aditya Malhotra  
and Mr. Madhu Sudan, Advocates for  
Applicant. (M:9953460388)  
Ms. Ashmita, Advocate for Mr. P. S.  
Bindra, Advocate for Respondents.  
(M:9811054970 & 9811158591)

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

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**25.07.2018**

**I.A. 7599/2018**

1. This is an application under Section 9 of the Arbitration & Conciliation Act, 1996 filed by one Mr. Jasbir Singh, who is father of Respondent No.2. The relief sought in the application is as under:

*“In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:*

*a) vacate/set aside all interim orders passed by this Hon'ble Court dated 04.05.2004, 22.11.2005 in OMP No. 145 of 2004 and 27.03.2015 in I.A. NO. 19137 of 2014 in OMP No. 145 of 2004.*

*b) Pass an order directing that the original sale deed*

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*dated 18.06.1980 in respect of the said property lying with this Hon'ble Court be released to the Applicant;  
c) Restrain Petitioners and the Respondents from interfering with the exclusive rights, title and interest of the Applicant in the said property; and /or  
d) Pass such other orders as this Hon'ble Court may deem & appropriate in the facts & circumstances of the present case as also in the interest of justice;"*

2. The application has been moved on the basis that the said Mr. Jasbir Singh, applicant, had purchased the property, which is the subject matter of the present dispute, bearing no.40/72, West Punjabi Bagh, New Delhi-110026 ('property') in an auction.
3. It is the case of the applicant that the property, in respect of which an agreement to sell was entered into between the Petitioners and Respondent Nos.1 & 2, was already mortgaged with UCO Bank prior to said agreement. UCO Bank, due to non-clearing of the dues by the Petitioners herein, had invoked SARFAESI proceedings, which resulted in the property being auctioned on 10<sup>th</sup> August, 2007. Pursuant to the auction dated 10<sup>th</sup> August, 2007, a sale certificate was issued in favour of applicant on 17<sup>th</sup> August, 2007.
4. The said sale was challenged by the Petitioners herein, before the Debt Recovery Tribunal ('DRT') and vide order dated 6<sup>th</sup> August, 2012, the DRT upheld the sale.
5. The applicant submits that the status quo order passed by this Court on 4<sup>th</sup> May, 2004 and confirmed by order dated 22<sup>nd</sup> November, 2005 be, therefore, modified so as to allow the applicant, who has purchased the property in the SARFAESI proceedings, to take possession of the property. Presently, Respondent no.1 is in possession of the Ground floor of the



property and the first floor is lying sealed.

6. The Petitioners, who appear in person, have made their submissions that it is their case that the auction, in fact, did not take place and was postponed. They rely upon a document which was issued by the agency which was to conduct the auction. It is further submitted by them that the earlier application filed on behalf of the very same applicant, by Mr. G. S. Batra, was dismissed by this Court and so the applicant herein cannot seek the same relief.

7. It is further submitted by the Petitioners that the first floor and terrace of the property are lying sealed under the order of this Court dated 14<sup>th</sup> August, 2014 and, therefore, the applicant cannot be allowed to seek de-sealing at this stage.

8. This Court has heard the parties. The first submission of the Petitioners is that the applicant being alien to the arbitration agreement, cannot be entertained by this Court by means of an application. In response Mr. Nayar, learned Senior Advocate for the applicant submits that his client is willing to subject himself to arbitration proceedings.

9. The auction sale in which the applicant purchased the property was subject to the outcome of the arbitration proceedings pending between the Petitioner and Respondent nos 1 and 2. It is also noticed that the public notice relating to the auction of the property, itself provided that the auction proceedings are subject to the arbitration proceedings. Relevant portion of the said public notice is extracted herein below.

“ .....  
*Public at large is also put on notice that confirmation of sale will be made by ‘ARCIL’ upon the terms of payment being complied with by*



*the successful bidder and upon such compliance, a sale certificate for the scheduled property in favour of the purchaser will be executed by the constituted attorney of ARCIL under the Securitisation Act. However, the sale of the said property would be subject to the adjudication of the rights/claims of various parties which are pending adjudication in arbitration case before Hon'ble Justice A.B. Saharya (Retd.).*

10. Thus, in effect, the applicant's fate in respect of the property is intertwined with the pending arbitration. In view thereof, the applicant purchaser is permitted to be impleaded as a party in the arbitration proceedings and to put forth his case before the present Sole Arbitrator, Justice Mr. Anil Dev Singh (Retd.). It is directed that the applicant shall also participate regularly in the arbitration proceedings and shall not cause any delays in the adjudication thereof.

11. For the time being, the property is not being put to any use. It is the case of the applicant that the Respondent No.1, who is in possession of the property, ought to be directed to give possession to him inasmuch as the sale in his favour having being confirmed by the DRT, the applicant should be allowed to enjoy the property. Learned counsel for the applicant has undertaken to this Court that he will not carry out any unauthorised construction in the suit property and also not part with possession or create any third party interest during the pendency of the arbitration proceedings.

12. Subject to the said undertaking, which is accepted by the Court, possession of the property is directed to be given to the proposed applicant within a period of three days.

13. Parties are permitted to approach the Sole Arbitrator in respect of any



further relief that they wish to seek.

14. It is noticed that this OMP was disposed of on 6<sup>th</sup> December, 2016 and repeatedly applications have been filed before this Court. Henceforth, any interim relief, which the parties wish to seek, shall be filed before the Sole Arbitrator by means of an application under Section 17 which shall be considered by the Ld. Arbitrator.

15. The parties, including the applicant, to appear before the Ld. Sole Arbitrator on 1<sup>st</sup> August, 2018, which is the date already fixed in the proceedings.

16. I.A. is disposed of in the above terms. *Dasti.*

**PRATHIBA M. SINGH, J.**

**JULY 25, 2018/dk**