

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9016 OF 2025

Shriniwas Ramdas Dubas Prop. Of
M/s. Shriniwas Ramdas Dubas And Another ...Petitioners.
Versus
Bank Of Maharashtra Thr And Another ...Respondents.

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WRIT PETITION NO. 160 OF 2026

Shriniwas Ramdas Dubas Prop. Of
M/s. Shriniwas Ramdas Dubas And Another ...Petitioners.
Versus
Bank Of Maharashtra And Another ...Respondents.

Mr. Mandar Soman (Through V. C.) a/w Mr. Amol S. Deshinge i/b
Mr. Amarnath Boddul, Advocates for the Petitioners in Writ Petition
Nos.9016/2025 and 160/2026
Mr. Sachin Patil, Advocate for the Respondent – Bank in Writ Petition
Nos.9016/2025 and 160/2026

Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.

Date : August 28, 2026.

P. C. :

1. The captioned Writ Petition No.160/2026 has been preferred challenging the order dated 12.11.2025 passed by the Debt Recovery Appellate Tribunal, Mumbai (hereinafter referred to as 'the DRAT') in I. A. No.378/2025 in Misc. Appeal No.88/2025.

2. Misc. Appeal No.88/2025 was filed by the Respondent Bank before the DRAT being aggrieved by the order dated 17.06.2025 passed by the Presiding Officer, Debts Recovery Tribunal, Pune (hereinafter referred to as 'the DRT'), in Securitisation Application No.388/2025. The DRT, by the said order, held in Paragraph Nos.7 and 8 as under :

"7. In my judgment when matter is, particularly, Stay Application challenging possession process of mortgaged property initiated by bank or financial institution is pending for hearing before the Court, process of taking possession should be slow. In the present case, it appears that defendant bank has hastily taken possession of the suit factory described in Schedule-I without waiting for order of the Court on said application filed by the applicants. So also, the defendant bank took possession of remaining two suit properties described in Schedule-II & III after Court disposed of the present application holding that it has become infructuous. The Court Commissioner has given reply to Notice issued by this DRT along with Pursis (Exhibit-9) produced by the applicant which is silent about timing of taking possession of the suit properties and therefore, explanation is devoid of consideration.

8. In view of these observations, I am of opinion that applicants are entitled for relief of restoration of possession of suit factory described in Schedule-I of the Securitisation Application as its possession was taken at the time of hearing of this application before Presiding Officer, DRT Nagpur, In-charge DRT, Pune. At the same time I hold that the applicants are not entitled for relief of restoration of other two properties described in Schedule-II & III of the Securitisation Application as possession of the same was taken after disposal of this application by Presiding Officer, DRT Nagpur, In-charge DRT, Pune."

3. By the impugned order, DRAT opined that mere pendency of a stay application is not a ground for the Bank to defer taking possession unless stay is granted. As DRT had directed restoration of possession only on the ground that possession was taken during the pendency of the stay application before the DRT, the order was held to be not in accordance with law and liable to be set aside.

4. Mr. Soman, learned counsel appearing for the Petitioner, points out that in the earlier round of litigation, all the prayers in the interim applications of the Petitioners were not considered. He points out that this Court, by order dated 11.03.2025, had prima facie observed that a grievance was also raised with regard to the illegal manner in which possession was taken, noting that the Presiding Officer of the DRT had called for an explanation from the concerned Court Commissioner as to why possession was taken when the matter was sub judice before the Tribunal. He further submits that the DRT, in view of the fact that possession was taken during the pendency of the proceedings before the DRT and when the final arguments were ongoing, has rightly restored possession of the suit property described in Schedule-I. However, so far as the properties described in Schedule – II and III, of which possession was also taken by the Bank, the DRT has not directed the relief of restoration of those two properties. He submits that the

connected Writ Petition challenges that part of the order of the DRT, which declines the relief of restoration of possession of the suit properties described in Schedule – II and III of the Securitisation Application.

5. We have considered the submissions and perused the record.

6. In so far as the connected Writ Petition No 9016 of 2025 is concerned, against the order of the DRT dated 17.06.2025 declining restoration of possession of Schedule II and III properties, the Petitioners did not prefer any appeal before the DRAT and have directly approached this Court. The Respondent Bank being aggrieved by part of the order dated 17.06.2025 immediately approached the DRAT, which passed the order dated 12.11.2025. The Petitioners had participated in the hearing of the Respondent Bank's appeal challenging the very same order to the extent that it directs possession to be handed over to the Petitioners of Schedule I property. Having failed to appeal against the order of 17.06.2025 to the extent of declining restoration of possession of Schedule II and III properties, we are not inclined to entertain the challenge by the Petitioners directly in this Court. Considering the alternate remedy, which was available to the Petitioners before the DRAT, and which has not been availed, we are not inclined to entertain Writ Petition No.9016/2025 and the same stands dismissed.

7. Coming to the Writ Petition No 160/2026, the only reason assigned by the DRT in the order of 17.06.2025 for restoration of possession of the suit factory described in Schedule – I of the Securitisation Application to the Petitioners is that the stay application was pending adjudication before the DRT and in such circumstances, the process of taking possession should be slow. There is no finding of illegality in taking over the possession by the Respondent Bank. By the impugned order, the DRAT opined that mere pendency of a stay application is not a ground for the Bank to defer taking possession unless the stay is granted. There is no statutory provision which provides that the pendency of an application before the DRT, without any stay having been granted by the order of the DRT, would operate as stay against the Bank from taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

8. The argument of Mr. Soman rests on the ground of propriety, as the final arguments were being heard. In the absence of any restraint order against the Bank, it was within its rights to exercise powers under the SARFAESI Act and take possession. There is no other reason apart from the pendency of the proceedings before the DRT which resulted in the grant of relief of restoration of possession of the suit factory

described in Schedule – I. The submissions canvassed by Mr. Soman borders on terming the mere filing of application as statutory stay to further action by the Bank. We are of the opinion that if the contention of Mr. Soman is accepted, the parties would delay the hearing of the proceedings, which would indirectly operate as restraint order against the Bank.

9. In light of the above discussion, there is no perversity in the order passed by the DRAT. Resultantly, Writ Petition No.160/2026 and Writ Petition No. 9016/2025 stand dismissed.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]