<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 873 OF 2015

Deepika Paresh Thakkar ..Petitioner

Vs.

Gruh Finance Limited and Others ..Respondents

Mr. Chirag Modi a/w Mr. Rohit Gupta, Uzavi Kazi, Mr. Mohanish Patkar i/b Divya Shah Associates,for the Petitioner.
Mr. Rishabh Shah a/w Mr. S. N. Acharya, for Respondent No.1.

CORAM :- **V. M. KANADE &**
B. P. COLABAWALLA, JJ.

DATE :- **JUNE 11, 2015.**

<u>P. C.:</u>

By this Petition which is filed under Article 226 of the Constitution of India, the Petitioner has challenged the order dated 28th November 2014 passed by the Debts Recovery Appellate Tribunal, Mumbai. During the course of hearing, the learned counsel for the Petitioner submits that in fact inadvertently he did not refer to the order dated 15th July 2014 passed by the Debts Recovery Appellate Tribunal, Mumbai. It is submitted that the

DRAT has dismissed the Appeal without taking into consideration all his submissions. It is submitted that the Petitioner has a good case on merits and the notice issued under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") itself is barred by limitation.

2 We have perused both the orders passed by the learned DRAT. The first order dated 15th July 2014 has been passed on account of the statement made by the Petitioner herein in which it is clearly mentioned that the Appellant was prepared to settle the amount and pay Rs.23 Lakhs to the Respondent. In view of this statement, the learned DRAT gave directions that the premises should not be disturbed and time was granted to the Petitioner to make the said payment within four weeks.

3 Since the Petitioner did not pay the amount as agreed by her, the DRAT was pleased to then pass the impugned order dated 28th November, 2014 mainly on the ground that on account of non payment of amount of Rs.23 Lakhs as agreed by her, the Appeal will be liable to be dismissed.

4 It is a settled position in law that once the statement is made and a party gives consent to make payment of a certain amount, the question of then going into the merits of the case does

not arise. Secondly, under Section 18 of the SARFAESI Act, borrower is supposed to pay 50% amount due and payable. This amount has not been waived or reduced by the DRAT on account of the consent given by the Petitioner and therefore, the Petitioner was duty bound to make the said payment. We therefore, do not find any infirmity in the order passed by the learned DRAT in dismissing the Appeal on account of non payment of the amount. We are therefore not inclined to interfere with the impugned order. The Petition is disposed of. The Securitization Application is still pending. All contentions are kept open. It is well settled that in the event the Petitioner succeed, she can seek restoration of possession along with all other remedies that may be available to her in law.

[B. P. COLABAWALLA, J.] **[V. M. KANADE, J.]**