

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3656 OF 2015

Shree LTC Exports (India) P Ltd.

..Petitioner

Versus

Bank of India

..Respondent

....

Mr. Umesh Shetty a/w. Mr. Manish P. Gitay, Advocate for the  
Petitioner.

....

CORAM : V. M. KANADE, &  
A.R. JOSHI, JJ.

DATE : APRIL 10, 2015

P.C.

1. Heard the learned Counsel for the petitioner.
2. The petitioner is aggrieved by the order dated 2<sup>nd</sup> March, 2015, passed by the DRT refusing to grant ad-interim relief and as a result the respondent Bank is going to take possession today by 12:30 p.m.. It is submitted that the DRAT Chairman is not available and, therefore, the petitioner could not move the DRAT and has approached this Court.
3. The contention of the petitioner is that notice under Section 13(2) of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for short, “the SARFAESI Act”) has not been served on the petitioner and no hearing was given by the learned CMM in the proceedings which were taken under Section 14 of the SARFAESI Act. It is submitted that the learned DRT has rejected the application merely because the petitioner was in a position to deposit any amount still the petitioner has not paid any amount to the respondent.

4. We are of the view that the petitioner has alternate remedy available of approaching the DRAT. Secondly the DRT in its order has *prima facie* observed that from the order which is passed under Section 14 of the SARFAESI Act dated 15.3.2013 it reveals that the demand notice under Section 13(2) of the SARFAESI Act was served on the borrower and the bank has ample evidence to prove this fact. That being the position we are not inclined to interfere with the said order refusing to grant ad-interim relief.

5. Further it is always open for the petitioner to establish before the DRT that the measures which are required to be taken under Section 13(2) of the SARFAESI Act were not taken and if it is

established then the DRT has ample power to restore the possession of the petitioner and award compensation.

6. Hence, Writ Petition is dismissed, reserving the right of the petitioner to approach the DRAT.

(A. R. JOSHI, J.)

(V.M. KANADE,J.)

Deshmane, (P.S.)