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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10245 OF 2014

M/s. Pyramid Wines Pvt. Ltd. and Ors. ....Petitioners  
Vs.  
Union Bank of India and Ors. ....Respondents  
\*\*\*\*\*  
Mr.Sushant Prabhune for Petitioners  
Mr.Sanjay Anbhavane i/b. Ms. Noor I. Bakali for Respondent No.1  
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CORAM : V. M. KANADE  
REVATI MOHITE DERE

DATE : JANUARY 14, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioners and the learned counsel appearing on behalf of the Respondent No.1.

2. A preliminary objection has been raised by the Respondent regarding maintainability of the petition under Article 226 of the Constitution of India. It is submitted that the Petitioners are challenging the sale of the secured assets by the Bank and they, therefore have a right to file an appeal under section 17 of the Securitisation Act. He has relied on the judgment of the Apex Court in the case of **United Bank of India vs. Satyawati Tondon and Ors. [2010 (8) SCC 110]**.

3. The learned counsel for the Petitioners, on the other hand, has tried to distinct the judgment of the Apex Court from the facts of the

present case. He has also relied on the judgment of the Apex Court in the case of **J.Rajiv Subramaniyan and Anr. Vs. M/s. Pandiyas & Ors. delivered in Civil Appeal No. 3865 of 2014**. He has relied on paragraph 13 of the said judgment. The grievance of the Petitioners is that provisions of Rule 8 and Rule 9 of the Enforcement of Security Interest Rules, 2002 have not been complied before the property was sold.

4. We are not inclined to accept the submissions made by the learned counsel for the Petitioners. It is a well settled position in law that if any person is aggrieved by any of the measures taken by the Bank under section 13(4) of the said Act, he has a right to prefer an appeal under section 17. In the present case, the grievance of the Petitioners is that their property has been sold by private treaty and not by auction sale. Perusal of section 13(4) A, clearly discloses that any kind of sale can be challenged by filing an appeal under section 17 of the said Act. We are unable to accept the submission made by the learned counsel for the Petitioners that the facts in the case of **United Bank of India vs. Satyawati Tondon and Ors. (supra.)** were different and, therefore, the ratio of the judgment is not applicable to the facts of the present case. The Apex Court in paragraph 55 of the said judgment has observed as under:

“55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the

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High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

We are of the view that ratio of the said judgment would squarely apply to the facts of the present case. Even the judgment of the Apex Court in the case of **J. Rajiv Subramaniyan and Anr. (supra.)** does not give any assistance to the case of the Petitioners, since in the said case, the learned counsel for the Appellants had in terms stated that he did not press the point that the High Court has erred in entertaining the writ petition filed by Respondent Nos.1 and 2. In the said case, the said submission has been recorded by the Apex Court in paragraph 4 and, therefore, the observation made in paragraph 13 will not take the case of the Petitioners any further.

5. So far as the grievance of the Petitioners that Rule 8 and Rule 9 of the Enforcement of Security Interest Rules, 2002 has not been complied with before the property was sold is concerned, in our view, all these grievances can be looked into by the DRAT while considering the appeal filed by the Petitioners under section 17 of the SARFAESI Act. The writ petition, therefore, is disposed of in limine, reserving the right of the Petitioners to file an appeal under section 17 of the said Act.

[REVATI MOHITE DERE, J.]

[ V. M. KANADE, J.]