

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12419 OF 2015

Mrs. Jyotiben Sanghavi & Ors. .. Petitioners
Vs
Union Bank of India and Others. .. Respondents
—
Shri Ram Upadhyay i/b Law Competere Consultas for the Petitioners.
Shri Nainesh Amin for the Respondent No.1.
—

CORAM : A.S. OKA & G.S. PATEL, JJ
DATED : 11TH DECEMBER 2015

PC.

1. Not on board. Taken on board.
2. Heard the learned counsel appearing for the Petitioners.
The operative part of the impugned order passed by the Debts Recovery
Appellate Tribunal, Mumbai, reads thus:

- “1. The Appellant is permitted to deposit a sum of Rs.10 Lacs before the DRAT in the name of Registrar, DRAT, Mumbai within two weeks from the date of receipt of copy of this order.
2. In the event of deposit of the amount, M.A. No.704/2014 for restoration is ordered to be restored, failing with the appeal shall stand dismissed.

3. In the event of deposit, the banker is directed not to proceed with the matter till waiver application is disposed of.”

3. The Appellant filed the Securitization Application before the Debts Recovery Tribunal (DRT), which was dismissed for default. The Application for restoration made by the Petitioners was allowed by the Debts Recovery Tribunal by imposing the condition of depositing a sum of Rs.10 Lacs with the Respondent Bank towards the repayment of the loan.

4. The Paragraph 7 of the impugned judgment and order reads thus:

“7. This Court further is of the view that the order passed by the Registrar is correct since the office objections were not removed by the appellant. Therefore, the order of the trial court has been upheld. While after pronouncing this order, the counsel for the appellant has contended that he may be given an opportunity to deposit the amount before the DRAT and suitable order can be passed.”

5. The said Paragraph shows that the learned counsel appearing for the Petitioners prayed before the Debts Recovery Appellate Tribunal that he may be given an opportunity to deposit the amount of Rs.10 Lacs with the Debts Recovery Appellate Tribunal (DRAT). It is on the basis of the said statement made by the learned counsel appearing for the Petitioners that the impugned order has been passed. What is apparent from the said Paragraph 7 is that while the

order was being pronounced by the learned Chairperson of the DRAT, Mumbai, the aforesaid statement was made. The Petitioner on his own stated that an opportunity may be given to deposit the amount as directed by the DRT with the DRAT. On the basis of this statement, the Chairperson of the DRAT passed the impugned order.

6. In the circumstances, no interference can be made with the impugned judgment and order in writ jurisdiction under Article 226 of the Constitution of India. The writ jurisdiction is always discretionary. As the impugned judgment and order is based on the specific statement made by the learned counsel appearing for the Petitioners before the DRAT, the Petitioners cannot be allowed to invoke writ jurisdiction under Article 226 of the Constitution of India. The impugned order does not compel the Petitioners to pay the amount. The consequence of non deposit of the amount is provided in the said order. The Petition is accordingly rejected.

(G.S. PATEL, J)

(A.S. OKA, J)