

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 7 OF 2015**

Ganesh Bhimji Patel & Anr. Petitioners.

V/s

Bank of Baroda & Anr. Respondents.

Mr. Rohan Cama a/w Ms. Sapna Rachure i/b T.N. Tripathi &
Co. for the Petitioners.

Mr. A.R. Bamne, for Respondent No.1.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: 28th January, 2015

P.C.: (*Per V.M. Kanade, J.*)

1 Petitioners are aggrieved by the order passed by the DRAT dated 31/10/2014, directing the Petitioners to pay an amount of Rs 5 crores in two intallments within a period of eight weeks.

2. The learned Counsel appearing on behalf of the Petitioners submitted that while considering the application for waiver of pre-deposit, DRAT has to apply its mind and take into consideration the financial hardship which is caused to the applicant and thereafter pass a reasoned order. It is submitted that the DRAT has not given reasons while disposing the said application filed by the Petitioners.

3. The learned Counsel for the Petitioners invited our attention to paras 4, 5 and 7 of the said order. In support of the said submission, he relied upon the judgment of the Division Bench of this Court in *Sterlite Technologies Ltd vs. Union of India and others*¹ and more particularly on the observations which are made in para 6 of the said judgment.

3 On the other hand, the learned Counsel appearing on behalf of Respondent No.1 – Bank of Baroda has submitted that the Petitioners had given an offer that they had no objection if the said property was sold either by a private treaty or by auction. He submitted that the only condition imposed by the Bank was that the Petitioners should handover possession of the said property so that property could be auctioned. He submitted that this offer was not accepted by the Petitioners. He submitted that in respect of the other property, Petitioners had created third party rights, after demand notice was served. He submitted that, therefore, the offer which was given by the Petitioners is not bonafide but it is only an attempt to protract the proceedings. He submitted that it is not in dispute that the amount which is due and payable by the Petitioners is Rs 10,18,98,168/-. He submitted that under section 18 of the said Act, the DRAT has to direct the borrower to pay 50% of the amount due and claimed by the Bank. He submitted

¹ 2012(2) Mh.L.J.112

that the only option which is available to the DRAT is to reduce that amount from 50% to 25% and while doing that, special reasons have to be given by the DRAT.

4 The learned Counsel appearing on behalf of Respondent No.1 - Bank further submitted that DRAT had directed the Petitioners to pay an amount of Rs 5 crores which comes to about 50% of the amount due and payable to the Bank. He, therefore, submitted that there is no infirmity in the order passed by the DRAT.

5. It is not possible to accept the submission made by the learned Counsel appearing on behalf of the Petitioners. It is quite well settled that appeal which is filed under section 17 of the Act can be entertained only if conditions which are imposed under section 18 by the Appellate Authority are fulfilled. It is also quite well settled that the borrower has to pay atleast 50% of the said amount and that amount can be reduced to 25% by giving special reasons. Perusal of the application filed by the applicants for waiver of pre-deposit discloses that no case of financial hardship is made out in the said application. Only bald statements have been made that the applicants are running into financial losses and have faced various problems due to shortage of working capital. DRAT, therefore, after taking into consideration the submissions made by the Petitioners, has directed the

Petitioners to deposit 50% of the said amount since no case of financial hardship was pleaded. DRAT has recorded the submission of the Petitioners that since the property is residential flat its possession should not be disturbed. Thus, before the DRAT, no case of financial hardship was pleaded.

6. There cannot be any dispute regarding the ratio of the judgment in *Sterlite Technologies Ltd vs. Union of India and others*¹ on which reliance has been placed by the learned Counsel appearing on behalf of the Petitioners. In the said case, application for waiver of deposit under the provisions of section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was dismissed by the DRAT and that order was challenged since DRAT had declined to grant any waiver of deposit. Under these circumstances, while taking into consideration the said section 21, the Court has made observations on which reliance has been placed by the learned Counsel appearing on behalf of the Petitioners. In our view, the said observations would not be of any assistance to the Petitioners since, in the present case, application is filed under section 18 of the SARFAESI Act. Under section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 discretion vests in the DRAT to grant waiver of entire pre-deposit. It is obvious that when such a discretion is vested in the appellate authority either to grant or reject the application, appellate authority has to give

1 2012(2) Mh.L.J.112

separate reasons. However, so far as the application under section 18 is concerned, which is filed under the SARFAESI Act, appellate authority has no option but to direct deposit of 50% of the amount due by the applicant and for special reasons the said amount can be reduced to 25%. As we have noted hereinabove, Petitioners did not make out any case for reduction of the said amount to 25% which is evident from the averments made in the application for waiver as well as the observations made by the DRAT, no case is made out for interfering with the impugned order. Apart from that, in respect of one other property owned by the Petitioners and which is mortgaged to the Bank, Petitioners have tried to create third party rights after seeking time.

7. We are, therefore, not inclined to interfere with the impugned order. Petition is, therefore, dismissed.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)