

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1626 OF 2015

M/s Amicus Insurance Broking Services Pvt.Ltd.	... Petitioner
v/s	
Dena Bank and others	... Respondents

Mr Y. Bhargavan with Mr Rohan Janardhan, Mr Hamendra Jawale i/b
M/s Rex Legalis for Petitioner.
Me A.R. Bamne for Respondent No.1.

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

DATE : 10th June, 2015

P.C.(PER B.P. COLABAWALLA J.) :-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner has challenged the interim order dated 3rd June 2015 passed by the Debt Recovery Tribunal – III, Mumbai. By the impugned order, the DRT refused to grant any interim relief on the ground that no prima facie case was made out. Without approaching the DRAT, the Petitioner has approached this Court in its writ

jurisdiction.

2. It is the case of the Petitioner that it is in possession of the premises mortgaged to the Bank under two registered leave and licence agreements dated 7th July 2012. On default being committed by the borrowers (Respondent Nos.2 and 3), the Respondent No.1 – Bank sought to enforce its mortgage for recovery of its dues. The Bank accordingly approached the Chief Metropolitan Magistrate under section 14 of the SARFAESI Act and obtained an order for dispossessing the Petitioner. Being aggrieved thereby, the Petitioner approached the DRT by filing Securitisation Application No.181 of 2015. It is in this S.A. that the prayer for interim relief has been rejected.

3. Though several points were sought to be urged on behalf of the Petitioner including the fact that the mortgage was created after the leave and licence agreements were entered into with the Petitioner, we are not inclined to interfere with the impugned order in our writ jurisdiction. As noted earlier, the impugned order is an interim order

and the S.A. No.181 of 2015 is still pending final adjudication before the DRT – III, Mumbai. Furthermore, despite there being an alternate remedy of approaching the DRAT, the Petitioner has directly approached this court under article 226 of the Constitution of India. In this view of the matter, and coupled with the fact that there is also an issue of limitation raised with reference to the filing the above Securitization Application, we are not inclined to interfere with the impugned order. We however clarify that the findings in the impugned order are of a prima facie nature and the above S.A. No.181 of 2015 shall be decided on merits being uninfluenced by any observation in the impugned order. With these observations, Writ Petition is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(B.P. COLABAWALLA, J.)

(V.M. KANADE J.)