IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2858 OF 2015

KSHAMA RENUKADAS VAIDYA AND ANOTHER
VERSUS
AUTHORIZED OFFICER, IDBI BANK LTD, MUMBAI AND OTHERS
...
Advocate for Petitioners : Mr. Siddharth R.Deshpande
AGP for Respondent No.5: Mrs. A.V. Gondhalekar.
Advocate for respondent Nos. 1 and 2 : Mr. S.S. Deve.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 5th AUGUST , 2016.

PER COURT:

Mr. Deshpande, learned counsel for the petitioners submits that against the order passed by the Sub Divisional Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Security Interest Act, (hereinafter referred to as the "SARFASI Act"), the petitioner had filed application under Section 17 of the said Act. Said application was rejected. Aggrieved thereby, the petitioners filed an appeal before the Debt Recovery Appellate Tribunal (DRAT) Mumbai. The DRAT, Mumbai, directed the petitioners to deposit 75% of the amount, as pre-deposit. The said order is assailed in the present petition.

2] According to Mr. Deshpande, learned counsel, the order is passed by the Sub-Divisional Magistrate under Section 14 of the SARFASI Act. The Sub-Divisional Magistrate does not have jurisdiction to entertain the application under Section 14 of the said Act. The learned counsel sought to place reliance on two judgments of the Division Bench of this Court.

3] Mr. Deve, learned counsel for respondent Nos. 1 and 2 submits that, in fact, the petitioners had compromised with the respondent No.2 before the Debt Recovery Tribunal (DRT) and had agreed to pay an amount of Rs. 1 Crore 5 Lakhs, two years back. Terminology, “District Magistrate” includes “Sub-divisional Magistrate” also.

4] We need not enter into the said aspect. The appeal is pending before the DRAT, Mumbai. It is for the DRAT, Mumbai to decide the same on its own merit. In this petition, we are concerned with the aspect of pre-deposit. Second proviso to Section 18 of the SARFASI Act lays down that no appeal would be entertained by the Appellate Tribunal unless the petitioner has deposited 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal whichever is less. Second proviso to Section 18 gives discretion to the Tribunal to reduce the amount but not less than 25% of the debt.

5] This Court, vide order dated 12th March, 2015, had directed the petitioner to deposit an amount of Rs. 21 Lakhs. The petitioner has already deposited an amount of Rs. 5 Lakhs when the matter was before the DRT. As such, the petitioner as deposited total amount of Rs. 26 Lakhs, which is equivalent to 25%.

6] Considering the grounds raised by the petitioners about their financial capacity, we direct the petitioners to deposit an amount of Rs. 15

Lakhs with the respondent bank, which shall be without prejudice to the rights of either of the parties, within a period of 6 weeks from the date of this order. Upon deposit of the said amount, the DRAT shall hear the appeal on its own merits and till the disposal of the appeal, the respondent Bank shall not proceed further pursuant to the order impugned before the DRAT. It is made clear that respondent bank is not precluded from taking fresh proceeding under Section 14 of the SARFASI Act, as is permissible in law.

7] With above directions and observations, writ petition stands disposed of. No costs.

[K.K. SONAWANE] **[S.V. GANGAPURWALA]**
JUDGE **JUDGE.**

grt/-