

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 189 OF 2016
IN
WRIT PETITION NO. 2858 OF 2015**

Mrs. Kshama Renukadas Vaidya
and others

...APPLICANTS

versus

Authorized Officer,
IDBI Bank Ltd. and others

...RESPONDENTS

.....

Mr. S.R.Deshpande, Advocate for applicants - original petitioners
Mr. A.S. Pathak, Advocate for respondents No.1 and 2
Mr. B.V. Virdhe, AGP for respondent No. 5

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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 7th OCTOBER, 2016.

Order :-

1. Present review petition is filed by the applicants - original petitioners in respect of order dated 5th August, 2016.

2. Mr. Deshpande, learned counsel appearing for applicants-petitioners submits that this court under order dated 5th August, 2016 had directed the petitioners to deposit amount of Rs.15,00,000/- (Rupees fifteen Lakhs) in addition to amount already deposited with the Bank. Learned counsel relying on judgment of the Apex Court in the case of *Axis Bank Vs. S.B. S. Organics Private Limited and another* reported in *AIR 2016 Supreme Court 2024* submits that condition of pre-deposit is not secured asset nor secured debt, pre-deposit has to be refunded to

borrower unless already appropriated by the Bank with consent of depositors or any attachment in any proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act or Rules. The applicants are directed to deposit said amount in the bank, earlier orders of depositing the amount were to the effect of deposit in the court.

2. Mr. Pathak, learned counsel for non applicant-banks states that amount to be deposited as per order of this court is without prejudice to rights of the parties. If applicants succeeds, bank at any time would refund the amount to the applicants-petitioners, huge amount is to be recovered by the bank from the applicants.

3. It is not necessary to dilate further in the matter in view of the judgment of the Apex Court in case of *Axis Bank (Supra)*. It is held by the Apex Court that pre-condition for entertaining appeal is not secured asset nor secured debt, pre-deposit has to be refunded to the borrower on disposal of appeal unless already appropriated by bank with consent of borrower.

4. In light of that, order directing the applicants to deposit amount of Rs. 15,00,000/- (Rupees fifteen Laksh) with bank is modified to the extent that applicants shall deposit said amount as directed by this court under order dated 05-08-2016 with Debt Recovery Tribunal Aurangabad. It is stated earlier amount of Rs. 5,00,000/- (Rupees Five Lakhs is also deposited with Debt Recovery Tribunal Aurangabad. Amount of Rs.21,00,000/- (Rupees Twenty One Lakhs) already

deposited in this court under order dated 12-03-2015 shall also be transmitted to Debt Recovery Tribunal, Aurangabad. The amount as directed by this court under order dated 5th August, 2016 shall be deposited with Debt Recovery Tribunal, Aurangabad within two weeks from today. Amount which would be deposited with Debt Recovery Tribunal, Aurangabad and also transmitted by this court shall be kept in fixed deposit in Nationalized Bank.

5. Review application is accordingly disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK