IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12170 OF 2016

1. Prabhakarrao s/o Vitthalrao Mahajan,
Age : 58 years, Occu. Business,
Proprietor M/s New Shriram Fibers,
R/o Gut No. 978, Village and
Post Phulambri, Tq. Phulambri,
District Aurangabad

2. Vitthalrao s/o Uttamrao Mahajan,
Age : 85 years, Occu. Agril.,
R/o 91, Deshmukh Galli,
Village and Post Phulambri,
Tq. Phulambri, Dist. Aurangabad

3. Rukhminibai w/o Vitthalrao Mahajan,
Age : 83 years, Occu. Household,
R/o 91, Deshmukh Galli,
Village and Post Phulambri,
Tq. Phulambri, Dist. Aurangabad **PETITIONERS**

VERSUS

1. State Bank of Hyderabad,
through its Authorized Officer,
Phulambri Branch, Tq. Phulambri,
District Aurangabad

2. Branch Manager,
State Bank of Hyderabad,
Phulambri Branch, Tq. Phulambri,
District Aurangabad **RESPONDENTS**

Mr. V.J. Dixit, Senior Advocate instructed by and with
Mr. Sushant V. Dixit, Advocate for the petitioners
Mr. S.R. Deshpande, Advocate for the respondents

CORAM : R.M. BORDE AND SANGITRAO S. PATIL, JJ.

DATE : 15th December, 2016

ORAL JUDGMENT (PER : R.M. BORDE, J.) :

Heard.

2. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing and disposal at the stage of admission.

3. The petitioner is objecting to the order dated 19^{th} November, 2016, passed by the Debts Recovery Tribunal, Aurangabad below application (Exhibit-16) in Securitization Appeal No. 111 of 2015.

4. The petitioners have presented application before the Debts Recovery Tribunal, which is pending. In the pending proceedings, an application seeking amendment was presented which came to be allowed. During the pendency of the proceedings, the District Magistrate passed an order directing the petitioners to hand over the possession of the secured assets to the respondent/Bank. The petitioners sought amendment with

a view to challenge the order passed by the District Magistrate during pendency of the proceedings by presenting an application at Exhibit-16. The application has been opposed by the respondent/Bank by presenting reply at Exhibit-20. It is the contention of the respondent/Bank that since the provisions of the Code of Civil Procedure are specifically excluded in Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "RDDB Act") and as per the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"), an application filed under section 17 of the Act has to be dealt with and disposed of as per the procedure prescribed for disposal of the applications under section 19 of the RDDB Act. As such, the application seeking amendment to the pleadings need not be entertained.

5. The Debts Recovery Tribunal accepted the objections raised by the respondent/Bank and proceeded to reject the application tendered by the petitioner at Exhibit-16.

6. We have perused the order passed by the Debts Recovery Tribunal. Even if application of the provisions of the Code of Civil Procedure is specifically excluded in RDDB Act, the principles governing consideration of application seeking amendment to the pleadings are not at all excluded and the Debts Recovery Tribunal is not estopped from considering successive applications for amendment of pleadings. The petitioners are justified in tendering application seeking amendment to the pleadings in view of the development which occurred during the pendency of the proceedings. The challenge raised by the petitioners can be conveniently considered in the pending proceedings since the order passed by the District Magistrate is in continuation of the proceeding and instead of driving the petitioners to present fresh proceeding, to impeach the orders passed by the District Magistrate, they can be permitted to amend the pleadings and challenge the order in the pending proceeding, which is necessary for final and effective adjudication of the controversy arising between the parties.

7. The objection raised by the respondent/Bank in respect of payment of separate court fees for raising challenge to the order passed by the District Magistrate deserves to be looked into. It would be the domain of the Registrar of the Debts Recovery Tribunal to consider the issue in respect of payment of separate court fees concerning the challenge raised by the petitioners by way of amendment and the Registrar shall pass appropriate orders in respect of payment of additional court fees after considering the submissions of the petitioners and the respondent/Bank. In the result, the Writ Petition deserves to be allowed with the following directions.

8. The order dated 19th November, 2016, passed by the Debts Recovery Tribunal below Exhibit-16 in Securitization Appeal No. 111 of 2015 is quashed and set aside and the application tendered by the petitioners below Exhibit-16 shall be deemed to have been allowed, subject to the directions in respect of computation of and payment of court fees as recorded hereinabove. The Debts Recovery Tribunal shall dispose of the pending proceeding expeditiously, preferably within a period of

four months from today.

9. Rule is made absolute in the above terms. There shall be no order as to costs.

[**SANGITRAO S. PATIL**] **JUDGE**

[R.M. BORDE] JUDGE

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