IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1312 OF 2014

M/s. Rajshree Tractors	}	**Petitioner**
versus		
The Saraswat Co-operative Bank	}	
Ltd. and Ors.	}	**Respondents**

Mr. Nitin B. Patil for the petitioner.

Mr.Bhupesh V. Samant for respondent no.1.

CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATED :- APRIL 29, 2016

P.C. :-

By this petition, the petitioner seeks to challenge an order passed by the Debt Recovery Tribunal (DRT), Pune in Securitisation Application No. 111 of 2013.

2) The order passed and impugned in this petition dated 18th December, 2013 is an interim order.

3) The contention of the petitioner's advocate is two fold. He submits that the bank suppressed the material and relevant fact from the tribunal and that is how the tribunal rejected the application for interim relief. The material and relevant fact, which was suppressed pertains to a proposed sale and though it

was not announced on the date of the tribunal's order, the tribunal was informed otherwise. This is thus a fraud played on the court.

4) The argument is that the subject matter of the mortgage deed is an agricultural land. An agricultural land cannot be proceeded against and by measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SERFAESI Act). Therefore, invocation of the Act and the steps taken to enforce the security are *ab initio* void and deserve to be set aside.

5) It is common ground that the order passed by the DRT is appealable before the Debt Recovery Appellate Tribunal (DRAT). The petition was entertained by this court only because there was no Chairperson and the seat was vacant. Now, though a permanent arrangement has not been made by the Central Government, what we were informed in other matter is that the Chairperson of the DRAT Allahabad has been requested and temporarily as an ad-hoc measure to come down to Mumbai and take up urgent cases. In the circumstances, we do not think that we should keep the writ petition pending.

6) We have found from the rival contentions that there are serious factual issues. This is not a case of established and proven fraud. Further, the petitioner has all opportunities in law to request the tribunal to take note of such fraud as is played and allegedly by respondent no. 1 bank on the court. Secondly, he can argue that the securitisation measures are not permissible simply because the land proceeded against is an agricultural land.

7) It is stated by Mr. Samant, on instructions that the securitisation application as also an appeal filed by the petitioner before the tribunal are dismissed. However, the petitioner's advocate states that it is not correct and they stand restored and are pending. In these circumstances, all the more we do not think that we should entertain the writ petition.

8) Further, we find that the whole attempt of the petitioner is to some how or the other stall the proceedings under the SERFAESI Act. That is how the order of status quo, which has been passed on 4th February, 2014, is continuing to the advantage of the petitioner. The petitioner wants the continuation thereof. That cannot be unconditionally and on the terms dictated by the petitioner.

9) We indicated to the petitioner's counsel that the claim of the bank is to the tune of Rs. 72 lacs approximately. The petitioner states that it cannot be more than 8 lacs. This is because the petitioner has paid 7 lacs and according to the petitioner only 7 lacs more are payable. We told the counsel to take instructions from the petitioner as to whether the petitioner is ready and willing to deposit a sum of Rs.15 lacs without prejudice to the rights and contentions of not only the petitioner but the bank. The petitioner's counsel, on instructions, states that it is not possible to arrange such a huge sum and deposit it.

10) After hearing the counsel on the point of continuing the order of status quo, we are of the view that in the event the petitioner deposits a sum of Rs.10 lacs within a period of 6 weeks from today, the order of status quo, which is operative from February, 2014 shall continue till the time the petitioner approaches the DRT or the DRAT and it passes orders on the interim application. We clarify that the DRT or DRAT are not bound to continue the present order. It would be open to them to pass orders as are permissible in law. In the event the amount is not deposited and without prejudice, the protection granted by this court would come to an end automatically after six weeks.

11) With the aforesaid directions, the writ petition is disposed of. We keep open all contentions and state that we have not expressed any opinion thereon.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)