IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2831 OF 2016

Shri Amitabh Banerjee and another ... Petitioners
v/s
Punjab National Bank and another ... Respondents

Ms Indrayani M. Koparkar for Petitioners.
Ms Pooja Singh i/b M/s Mable and Associates for Respondent No.1.
Mr Abhishek Yende for Intervenor.

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

DATE : 10TH MARCH 2016

***P.C.* :-**

1. By this Petition which is filed under Article 226 of the Constitution of India, the Petitioners seek an appropriate writ, order and direction directing the Respondents not to auction the flats of the Petitioners. The Petitioners have given a guarantee to a loan of Rs.40/- lakhs which is taken by their son. It is an admitted position

that in the first year, the Petitioners' son paid the installments which were due and payable. However, no installment has been paid thereafter and the money which is now due and payable is around Rs.36/- lakhs approximately. The Respondent – Bank had initiated action under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act 2002 (for short, SARFAESI Act). Time was given by the Bank to the Petitioners to repay the dues. However, since October 2015, despite time being granted by the Bank on several occasions, the outstanding amount has not been paid either by the Petitioners or by their son.

2. We are informed that the Bank had earlier tried to auction the property and this is a second attempt which was made by the Bank to auction the said property. The auction took place yesterday and one buyer has given his bid which has been accepted by the Bank. The auction purchaser has deposited an amount of Rs.7.5 lakhs as earnest money amount.

3. The learned counsel appearing on behalf of the Petitioners

submitted that three months' time may be given to the Petitioners so that within that time, the Petitioners could pay the outstanding amount after selling their flat at Badlapur. The learned counsel appearing on behalf of the Bank, however, submitted that it will not be possible for the Bank to give any further extension.

4. Since the parties are not ready to arrive at an amicable settlement, we have no other option but to dismiss the Petition since the Petitioners have an alternate efficacious remedy of filing an appeal under section 17 of the SARFAESI Act. The Apex Court in several cases and particularly in the case of United Bank of India v/s Satyawati Tondon and others, reported in (2010) 8 SCC 110, has observed that the High Court should not entertain such petitions under Article 226 of the Constitution of India when an alternate remedy by way of appeal is available to the borrower or the guarantor. We therefore decline to entertain this Petition. Writ Petition is therefore dismissed. However, in order to enable the Petitioners to avail of the alternate remedy, in the peculiar facts of this case, we order that status-quo as of today shall be continued for a period of two weeks

from today. This will be subject to further orders that may be passed by the Debts Recovery Tribunal. With these observations, the Writ Petition is dismissed.

(B.P. COLABAWALLA, J.) **(V.M. KANADE J.)**