

BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (L) NO.9038 OF 2016

Nazim Mohammed A Furniturewala Petitioner.

V/s

Dena Bank and Others Respondents.

Mr. Atul Damle, Senior Counsel i/b Mr. Puneet K. Gogad for the
Petitioner.

Mr A.R. Bamne for Respondent No.1.

**CORAM: V. M. KANADE &
M.S. KARNIK, JJ.**

DATE: 23rd March, 2016

P.C.:- (Per V.M. Kanade, J.)

1. By this Petition which is filed under Articles 226 and 227 of the Constitution of India, Petitioner is seeking an appropriate writ, order and direction for continuation of the interim order dated 22/03/2016 which was passed by the DRT-III, Mumbai in S.A. No.115 of 2016.

2. Petitioner claims to be the partner of Respondent No.3. One of the other partners viz Mrs. Zohra Ashraf Furniturewala through their

Power of Attorney holder, created registered mortgage of the property. The Bank initiated proceedings under section 13(2) of the SARFAESI Act and a symbolic possession was taken by the Bank on 04/03/2015. Petitioner challenged the said notice by filing S.A. No.115 of 2016.

3. The learned Senior Counsel appearing on behalf of the Petitioner submitted that after the interim order was not continued by the DRT, Petitioner immediately preferred an appeal before the DRAT. It is submitted that, however, Chairman of the DRAT is not available and, therefore, he has filed this Writ Petition in this Court, seeking continuation of the interim order till his appeal is heard by the DRAT.

4. On the other hand, the learned Counsel appearing on behalf of the Bank submitted that the Petitioner can always approach the Chairman of the DRAT, New Delhi since the charge of DRAT, Mumbai is given to DRAT, New Delhi. Secondly, he submitted that the Petitioner being the partner of Respondent No.3 in whose name mortgage has been registered, he is also bound by the said registered mortgage and he cannot contend that he is not the borrower or guarantor. Thirdly, he submitted that the Petitioner has been approaching various forums and is trying to protract the proceedings. Fourthly, he submitted that if the Petitioner succeeds, the DRT has power to restore the possession to him.

5. In our view, it will not be possible to continue the interim order

which has been passed by the DRT, firstly because the conduct of the Petitioner and Respondent No.3 disentitles him for continuation of the said interim order. Respondent No.3 is a partnership firm of which the Petitioner and the other members of his family are partners. Initially, a Writ Petition was filed in this Court which was subsequently dismissed. SLP filed against that order was also dismissed. Thereafter, a suit was filed in Small Causes Court for declaration that the Applicant therein was a tenant. In these proceedings also, interim orders which were passed, had been ultimately vacated. Secondly, Respondent No.3 has not paid a single farthing to the Respondent – Bank and total dues which are payable to the Bank are more than Rs 80 crores with interest on the said amount from 2012. We are, therefore, not inclined to continue the interim order. In the impugned order also, the learned Judge has refused to continue the stay for taking physical possession of the property in question. Moreover, DRT has, by a reasoned order, dismissed the application of the Applicant. Applicant also will have to pay 50% of the amount due. When we asked the Petitioner whether he was willing to deposit 25% of the amount in this Court to show his bonafides, the Petitioner's Counsel, after taking instructions from the Petitioner, has expressed his inability to deposit any amount in this Court. It is obvious therefore that the Petitioner is trying to protract the proceedings.

6. We are therefore not inclined to continue the interim order. Writ Petition is accordingly dismissed. Hearing of the appeal, however, is

expedited. Appeal Court shall decide the appeal on merits and in accordance with law and it shall not be influenced by the observations made by this Court while disposing of this Writ Petition.

7. Writ Petition is disposed of.

(M.S. KARNIK, J.)

(V.M. KANADE, J.)