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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7963 OF 2014

Nitesh Ranchhoddas Patani

...Petitioner

Vs.

Assets Reconstruction Company
(India) Ltd. & Ors.

...Respondents

Mr. Shailendra Singh i/b. J.P. Consultia for the Petitioner
Mr. R.V. Govilkar & Mr. Iqbal A. Siddiqui
i/b. Ms. Gauri Digambar Dhale for the Respondent No.4

**CORAM : A.S.OKA, &
C.V. BHADANG, JJ.
DATE : JANUARY 12, 2016**

PC.:

1. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the 4th respondent.
2. The predecessor of the petitioner filed an application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the said Act). The said application was dismissed by the Debt Recovery Tribunal at Mumbai. Being aggrieved by the said order of the Debt Recovery Tribunal, an appeal was preferred by the petitioner before the Debt Recovery Appellate Tribunal (for short "DRAT"). An application was made before the DRAT for waiver. An order was made on 23rd June 2014 by the DRAT directing the appellant to deposit a sum of Rs.75 lakhs within a period of 4

weeks in two equal installments.

3. By the order dated 11th November, 2014 the said appeal was dismissed. The order dated 11th November, 2014 reads thus:

“The learned Counsel for the appellant requests for time to deposit the amount of pre-deposit as ordered by this Tribunal vide order dated 23.06.2014 in M.A.No.144/2010 i.e., application for waiver of deposit.

The ld. Counsel for the respondent No.1 opposed the request and submitted that sufficient time has already been given to the appellant for depositing the amount, therefore, the appeal has to be dismissed for non-compliance of the order dated 23.06.2014.

In view of above, since the appellant has not complied with the order dated 23.06.2014, the appeal cannot be entertained and the same is dismissed for non-compliance of the order dated 23.06.2014”.

4. In this petition under Article 226 of the Constitution of India, the petitioner has challenged both the orders dated 23rd June, 2014 and 11th November, 2014. In the impugned order dated 11th November 2014, the prayer made by the learned Counsel appearing for the petitioner has been recorded that the time to deposit the amount of pre-deposit as per the order dated 23rd June, 2014 be extended. We must note here that in this petition which was filed on 23rd August, 2014, the challenge was only to the order dated 23rd June, 2014 and by way of amendment, a prayer was added for challenging the order dated 11th November, 2014. Thus, during the pendency of the petition, a prayer was made by the petitioner before the DRAT seeking

extension of time to comply with the order dated 23rd June, 2014. The learned Counsel appearing for the petitioner tried to submit that what is recorded in first paragraph of the order dated 11th November, 2014 is incorrect and such a request was never made by the petitioner before the DRAT for grant of time to deposit the amount in terms of the order dated 23rd June, 2014.

5. If what is recorded in the order dated 11th November, 2014 is correct, then the very fact that during the pendency of the petition, the petitioner applied before the DRAT for grant of time to deposit an amount payable under the order dated 23rd June, 2014 shows that the petitioner accepted the correctness of the order dated 23rd June, 2014.
6. The submission that what is recorded in the order dated 11th November, 2014 cannot be considered in this writ petition. The learned Counsel appearing for the petitioner seeks permission to withdraw the petition with liberty to file an application before the DRAT for necessary clarification of the order dated 11th November, 2014.
7. The said prayer is accepted with the clarification that the petitioner will be entitled to challenge the order dated 23rd June, 2014 only if a clarification is made by the DRAT as regards what is recorded in the order dated 11th November, 2014.
8. Accordingly, we dispose of the petition with liberty as aforesaid. We make it clear that all the contentions of the parties in the application, which may be made by the petitioner before the DRAT are expressly kept open.

9. It is always open for the contesting respondents to point out to the DRAT that the statement recorded in the order dated 11th November, 2014 was in fact made by the Advocate for the petitioner before the DRAT.

(C.V. BHADANG,J.)

(A.S.OKA,J.)