*AGK*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**WRIT PETITION (L) NO. 31 OF 2016**

Phoenix ARC Private Limited ...Petitioners
*Versus*
Suresh Trading Company ...Respondents

**WITH**
**WRIT PETITION (L) NO. 32 OF 2016**

Phoenix ARC Private Limited ...Petitioners
*Versus*
Sunil Solvent Extraction Limited & 7 Ors. ...Respondents

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**Mr. Zubin Behramkamdin**, *a/w Mr. Charles J. De'Souza and Ms. Mahima Sinha and Ms. Aneesa Cheema, i/b M/s. Verus, for the Petitioners in both Petitions.*
**Mr. Ashwin Ankhad**, *a/w Ms. Hetal Master, i/b M/s. Ashwin Ankhad and Associates, for the Respondents in both Petitions.*

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**CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.**
**DATED: 27th January 2016**

**PC:-**

**1.** We have heard both sides.

**2.** The Writ Petitions are admitted and Rule is issued on it. By consent, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

**3.** Both the Petitions are directed against the order passed by the Debts Recovery Appellate Tribunal (**"DRAT"**) at Mumbai in Appeals No. 128 and 145 of 2014. By this common order delivered on 8th December 2015, the Debts Recovery Appellate Tribunal has passed the following directions:

> "In Appeal No.128/2014 the respondents have agreed to make payment of Rs.4.37 Crores on or before 31.03.2012. In event of default, the respondents agreed to make payment of interest @8% p.a. on balance amount which comes to Rs.27 Lacs. According to the appellant the default amount comes to Rs.1,03,65,071/- plus expenses on calculating interest @ 13.60% p.a.
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> The respondents have given consent for making a payment of Rs.4.37 Crores with interest @8% p.a. if the interest is calculated it comes to Rs.27.65 Lacs. The amount of Rs. 4.37 Crores has bee paid in October 2014 instead of August 2011. Therefore, the respondents are directed to deposit Rs.27 Lacs within three weeks with the Registrar of this Tribunal from the date of receipt of copy of this order.
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> In Appeal No. 145/2014 the respondents have agreed to make payment of Rs.1.13 Crores on or before 31.07.2011 and in the event of default agreed to pay the amount with interest @30% p.a. and the total according to the appellant is Rs.84 Lacs plus expenses.
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> Now, this Tribunal has to see whether the appellant is entitled for interest @30% p.a. for the delayed payment. It can be looked into at the time of hearing of the appeal. Therefore, the respondents are directed to deposit Rs.42 Lacs within three weeks with the Registrar of this Tribunal from the date of receipt of copy of this

order.

The rate of interest which is to be calculated will be decided by this Tribunal.

In the event of the deposit, the original title deeds have to be returned to the respondents after keeping Xerox copies with the Registrar of this Tribunal. The Registrar is further directed to fix the date within a week directing both the parties to remain present at the time of delivery of the original title deeds for the verification purpose. The appellant's counsel has agreed to produce the original title deeds within one week from the date of receipt of this order.

In the even the title deeds are not produced within the time specified as above, the appellant is directed to re-deposit the entire amount which has been received from the respondent, thereafter within one week. If the appellant does not return the amount, the respondent is at liberty to raise his claim for loss sustained by them for non-compliance of this order. It is left open to the respondents even to initiate criminal proceedings against the appellants' appropriate persons at the original title deeds are retained by the appellants for past about three years.

In the event of depositing the amount by the respondent, he original title deeds can be returned to the respondents on receiving a bond executed by them for making payment of balance amount without prejudice to this appeal.

As and when the said amount is deposited, it shall be invested in fixed deposit in the name of the Registrar, DRAT, Mumbai with any one of the nationalized banks, initially for a period of thirteen months and thereafter it will be renewed periodically.

Stand over to 12.01.2016 for compliance of the above order (after praecipe).

Chairperson"

**4.** It is common ground that the Debts Recovery Tribunal (**"DRT"**) at Nagpur had before it Securitisation Application No. 119 of 2012. That was filed by Suresh Trading Company, the Respondent before us in Writ Petition (L) No. 31 of 2016. That was challenging the action taken under the Securitisation and Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 **("SARFAESI Act"),** particularly, putting up a property for Sale by Sale Notice dated 22nd November 2012. The Appellant invoked Section 17(1) of the Debts Recovery Tribunal, Nagpur which is an appellate remedy under the SARFAESI Act. After hearing both sides, by a detailed order passed on 27th March 2014, Securitisation Application No. 119 of 2012 was allowed. The action taken by the Respondents (Petitioners before us) and assignee of the debt under the provisions of the SARFAESI Act was quashed and set aside.

**5.** The aggrieved original Respondent/Assignee of the debt preferred two Appeals against this common order and in which instead of deciding the Appeals on merits, the above reproduced order and direction came to be issued.

**6.** After having perused the detailed orders passed by the DRT, Nagpur on the Securitisation Application, we are not in a position to agree with the DRAT. This is no manner of disposing of an

Appeal. One cannot pick up some issue or some controversy between the parties and then issue a direction of this nature. Such a direction has drastic consequences. There is no agreement or consent recorded for the same. What is substantial justice, according to the Appellate Tribunal, ought not be dispensed with in such a manner. There is no application of mind and no reasons are assigned. By this order, both Appeals stand virtually disposed of and nothing survives therein for adjudication. The agreement of the Respondent before the DRAT, namely, Sunil Solvent Extraction Limited and Suresh Trading Company to pay certain sums and with interest will not conclude the proceedings though the Tribunal may feel so. The Tribunal is aware that it will have to determine whether an Assignee/Original Appellant before it is entitled to interest at the rate of 30% for the alleged delayed payment. That the DRAT feels can be looked into at the time of hearing of the Appeal. It determined certain ad-hoc amount to be deposited and then it says that the rate of interest will be calculated later on. However, after deposit of Rs. 69 lakhs, the direction to return original title deeds surprises us.

**7.** How, therefore, that relief can be obtained by the Respondents in the Appeals before the DRAT and in the Appeals of somebody else, namely, the Petitioners has not been explained and clarified at all. Such a course whether permissible in law or otherwise ought to have been indicated with sufficient clarity and reasoning. We are surprised that not only there is a direction to the present Petitioners to not to object to the return of title deeds but return certain amounts and thereafter the Respondents before us and before the DRAT have been granted liberty to initiate criminal proceedings against certain persons. A bond was to be executed as security by the contesting Respondents, namely, before us in these Appeals for obtaining the original deeds.

**8.** This is no manner of disposing of an Appeal much less any interim Application therein. We do not know on which application or on whose request the orders are passed.

**9.** In such circumstances without expressing any opinion on the rival contentions, we quash and set aside this order and which is common in both Appeals. Both the Writ Petitions are allowed in these terms.

**10.** The Appellate Tribunal shall decide the Appeals on their own merits and in accordance with law uninfluenced by the exercise that is undertaken and followed in passing the impugned orders. There is no question of returning any title deeds much less originals unless the Appeals are heard and disposed of. The DRAT is aware that the original title deeds are in safe custody of the Registrar of DRT. Hence, any apprehension of the Respondents with regard to tampering or interpolation therein or they being returned to somebody who is not entitled to does not arise. In any event, the Tribunal is free to pass such orders as are permissible in law at the conclusion of Appeals in relation to these title deeds. If they are directed to be returned to the Respondents before us, that direction shall not take effect for a period of four weeks to enable the Petitioners to challenge the order of the DRAT in the higher Court.

**(G. S. PATEL, J.)** **(S.C. DHARMADHIKARI, J.)**