IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2158 OF 2014

Jatin Vershi Savla & Anr. …. Petitioners

V/s.

State Bank of India, Ahmedabad & Ors. …. Respondents

Mr. Rohan Cama, a/w. Mr. T.N. Tripathi and Ms. Sapna Rachure, i/by M/s. T.N. Tripathi & Co., for the Petitioners.

Mr. Raj Patel a/w. Mr. Prakash Punjabi, i/by M/s. Prakash Punjabi & Co., for Respondent Nos.1 and 2.

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

DATE : 14TH JUNE, 2016.

P.C. :

1. By this Petition, under Article 226 of the Constitution of India, the Petitioners are challenging an order passed by the Debts Recovery Appellate Tribunal, Mumbai, a copy of which is attached at Page No.150 of the paper-book.

2. An Appeal was filed in the D.R.A.T., being Appeal No.54 of 2012, by the Petitioners. A Miscellaneous Application No.198 of 2012 for waiving the condition of pre-deposit came to be presented, on which the impugned order has been passed on 5th June 2014.

3. The learned Chairperson refused to exercise the discretion in favour

of the Petitioners unconditionally and directed them to deposit a minimum amount of Rs.1 Crore.

4. The learned Chairperson found that one Securitization Application bearing No.52 of 2010 was filed in the Debt Recovery Tribunal-II, Mumbai, challenging the Demand Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, *(for short "SARFAESI Act")*. The same has been dismissed on 17th January 2012.

5. The Tribunal found that as per the notice under Section 13(2) of the SARFAESI Act, a sum of Rs.47,37,18,988=50, as on 15th April 2009, was due and payable. Certain movables were pledged and few immovable properties were mortgaged to secure the debt. The learned Chairperson found that, as against this huge outstanding amount, only a sum of Rs.8.01 Crores has been recovered by the Bank. Another property was put up for auction, but, as, against the reserved price, a bid was received, some amount was to be deposited, else the bid or offer cannot be accepted.

6. Mr. Cama, learned advocate appearing on behalf of the Petitioners, would submit that the Writ Petition raises questions of law. He would invite our attention to the initial order passed by this Court on 24th June 2014 and which was continued subsequently. In his submission the Court noted that the controversy is about how the condition stipulated by Section 18 of the SARFAESI Act can be taken to be satisfied.

7. In the submission of the learned counsel, an Appeal under Section

18 of the SARFAESI Act can be entertained in the event the Borrower deposits with the Tribunal 50% of the amount of debt due to him, as claimed by the Secured Creditors or determined by the D.R.T., whichever is less, and the third Proviso to this Section enables the Tribunal to record reasons and, for such reasons, reduce the amount to not less than 25% of the debt referred to in the second Proviso.

8. The precise contention is that when the amount due and as stated in the notice is claimed, but, in the meanwhile, certain properties are sold, then, the sale proceeds thereof would have to be adjusted and upon such adjustment, the Borrower would no longer be required to deposit the amount to the extent of 50% of the sum claimed in the notice under Section 13(2) of the SARFAESI Act or as per the order of the D.R.T. The amount so received by the Bank by way of sale can be adjusted and set off against this precondition.

9. It is conceded that a somewhat identical contention was raised before the Division Bench of this Court in the case of ***Vasanji Asaria Mamania Vs. Kalyani Exporters and Others, in O.O.C.J. Writ Petition No.2414 of 2013, along with Writ Petition No.2512 of 2013, decided on 9th June 2015***, but came to be negatived. However, the Division Bench did not have the benefit of a complete and proper argument on the point. In this Petition, such a question is squarely raised and, therefore, this Court should entertain this Writ Petition.

10. On the other hand, it is contended that these are nothing but delaying tactics. None of the legal contentions would arise simply because the Tribunal has exercised a discretionary power. Assuming, without

admitting, that the debt can be scaled down or the sum due can be adjusted in the manner suggested by Mr. Cama, yet, the amount to the extent of 50% or the reduced sum as per the above Proviso, have to be deposited and the Tribunal is empowered to refuse the discretionary exercise in favour of the Borrowers. Once the Tribunal has the discretion and which has been exercised judiciously and not capriciously or arbitrarily, then, in writ jurisdiction, this Court must not interfere and proceed to dismiss the Petition.

11. Having heard both sides at some length, we had clarified on the earlier occasion that we are not inclined to consider the legal challenge that is arising, according to the learned counsel for the Petitioners. The learned Chairperson has found that the D.R.T. has refused to assist the Petitioners. The D.R.T. has found that when the Petitioners are not really opposing sale of the immovable properties, but are buying time, then, it decided to impose a condition.

12. We have found from a reading of the order passed by the D.R.A.T. that it was aware of the controversy. It found from the record that 23 properties have been mortgaged and two items have been sold. Some of the properties could not be sold for want of Bidders. As per the notice under Section 13(2) of the SARFAESI Act, as against the outstanding sum mentioned therein of Rs.47 Crores and odd, one of the properties has been sold to the Auction Purchaser and only Rs.12.78 Crores have been adjusted. Even after adjusting all this, there is huge sum outstanding and will be payable with interest. In such circumstances, all that the Tribunal has directed was deposit of a sum of Rs.1 Crore as a condition to entertain the Appeal.

13. In the facts and circumstances of the present case and given the amount that is required to be deposited, we do not think that any larger question or controversy must be decided in this Writ Petition. Eventually, the writ jurisdiction is discretionary and equitable, we do not wish to assist a party like the Petitioners who has no intention of paying even a sum of Rs.1 Crore. The Petitioners have been accommodated repeatedly. In the circumstances, we do not think that the Writ Petition deserves to be entertained; hence dismissed.

14. At this stage, a request is made to continue the order passed by the Division Bench of this Court on 24th June 2014 for a period of twelve weeks from today.

15. This request is opposed by the learned advocate appearing for Respondent No.1-Bank. Once we find that the Petitioners are not ready and willing to comply with the very reasonable condition and even now have no intent of complying with it, we do not accommodate the Petitioners any further. The request to continue the ad-interim order is refused. The Petition is dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]