IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

WRIT PETITION (L) NO. 1702 OF 2016

Raunak Ramankant Pilani ...Petitioner

Versus

State Bank of India & Ors. ...Respondents

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Mr. Mayur Khandeparkar a/w. Mr. Prathamesh Kamat, Ms. Sapna Rachure i/b M/s. T. N. Tripathi & Co. for the Petitioner.
Ms. Medha Behere for the Respondent.

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

DATE : 27th JUNE, 2016.

P. C. :

1. Not on board. Taken on board.

2. This petition was placed before us because the learned Chairperson of the Debt Recovery Tribunal has not been appointed by the Central Government.

2. We have been noticing that the borrowers and guarantors, taking advantage of the vacancy in that post, as a matter of course are approaching this Court and seeking its protection. They do not wish to abide by any conditions imposed by law as well. Noticing that the appeal can only be entertained by the Debt Recovery

Appellate Tribunal under Section 18(1), only after complying with the two provisos. If the Tribunal is not approached for restricting the conditional deposit to 25%, then the Appeal cannot be entertained. Merely because there is vacancy in DRAT and the matter was earlier partly heard, we do not grant a unconditional protection, as claimed by parties like the petitioner.

3. Here also we have seen that the petitioner is a guarantor and as pointed out by the learned counsel appearing for the respondents that after 29.10.2015 nothing has been deposited. The outstanding amount as on the date of the notice under Section 13(2) of the SARFAESI Act was Rs. 3,45,55,736.28. The notice is dated 29.08.2012. After that date the petitioner has paid sum of Rs.1.79 Cr. The debt is mounting with interest. Therefore, the conditions that are imposed by the 1st and 2nd provisos to sub-section 1 of Section 18 would only serve as a guide and do not bind this Court, cannot be a fetter for this Court in passing an appropriate order for balancing the rights and equities. Bearing in mind that the bank has waited for more than 3 years, interest of justice would be served if we stay the dispossession of the petitioner till 31.07.2016 on the condition that within this period the petitioner pays a sum of Rs.1 Cr. to the bank without prejudice to his rights and contentions. The DRT to decide

the matter thereafter on merits and in accordance with law. Any default in compliance with this direction would result in the order passed under Section 14(1) becoming operative and enforceable. Thereupon the bank shall proceed to take physical possession of the property covered by such order and notice. It would not be necessary for the bank to approach the District Magistrate again or repeatedly.

4. The Writ Petition is disposed off in the above terms. No costs.

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