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

WRIT PETITION (L) No. 1797 OF 2016

Maharashtra State Financial Corporation ... Petitioner
Vs.
Small Industries Development Bank of India
& Anr. ... Respondents

Mr. Anil Anturkar, Sr. Counsel a/w Dr. Arun Kumar Barthakur, for the
Petitioners.

Mr. Rajesh Nagori i/b M/s. Sachin Dube & Associates, for Respondent
No. 1.

Mr. Mohamedali Chunawala a/w Pranil Sonawane, for Respondent
No. 2.

CORAM : V. M. KANADE, &
M. S. SONAK, JJ.

DATE : JULY 15, 2016

PC.

1. Heard the learned senior counsel appearing on behalf of
the Petitioner, and the learned counsel appearing on behalf of the
Respondent.

2. The Petitioner is aggrieved by the impugned order dated
2.6.2016 passed by the DRT-3, Mumbai in Original Application

No. 40 of 2006. The Petitioner is constrained to approach this Court by filing writ petition under Article 226 of the Constitution of India, because the Chairman of the DRAT is not available. Several other petitions have been filed in this Court, since there is no Chairperson available in Mumbai. In many cases, persons aggrieved by the order passed by the DRT have to go to Allahabad and now as of today the powers of appeal have been conferred on Chairman, DRAT at Calcutta. We are informed that the Chairman, DRAT is going to sit in Mumbai to hear the appeals and interim applications. Mr. Anil Anturkar, learned senior counsel appearing for the Petitioner submits that about 1500 applications are listed for hearing on Monday and Tuesday and it may not be possible for the Chairman, DRAT to hear and apply his mind in all the interim applications, which are listed before him. Mr. Anturkar, learned senior counsel submits that Petitioner is aggrieved by the observations made by DRAT-3 in clauses 4 and 5 of the operative order.

3. It is submitted that by virtue of the said order, the entire amount / funding which is available with the Petitioner will have to be transferred and in that case, the business of the Petitioner will come to

a stand still and they may not be in a position to pay salary of the staff.

4. We have perused the said order. It is not in dispute that by virtue of an interim order passed by the Division Bench, dated 10th June, 2010 in Writ Petition No. 3069 of 2006 this Court had directed the Petitioner to keep Rs. 29.54 aside. In other words, this Court had directed the 30% of the loan recovery to be made. This order has become final. The learned senior counsel for the Petitioner submits that pursuant to the said order, Petitioners have been keeping the said amount of 30% aside and the total amount is Rs. 29.54 Crores.

5. If the operative part of the order, and more particularly clauses 3 and 4 of the impugned are read, it will be clear that the apprehension expressed by the Petitioner that the entire amount will be paid over to the Respondent is not well founded. It is necessary to reproduce clauses (3) and (4) of the operative order, which read thus:

“(3) If the Defendant fail to pay the decretal amount with interest as above, all the legal modes of recovery as contemplated under the Act may be adopted for recovery of the debt due.

(4) The amount of recovery if any kept aside, shall be paid by the Defendant to the Applicant

after the Appeal period for filing the Appeal against this Judgment is over.”

Upon conjoint reading of clauses 3 and 4, it is abundantly clear that Respondent will have to apply for execution, and the recovery of the amount will be as per the provisions of law. The apprehension of the Petitioner that entire amount shall stand transferred immediately after the appeal period is over is incorrect and misconceived.

6. Clause 4, therefore, is restricted to the amount which has been kept aside pursuant to the directions given by the Division Bench of this Court. Learned senior counsel Mr. Anturkar, after taking instructions, submitted that Petitioner shall deposit the said amount with the DRAT Mumbai within 2 weeks from today. In view of this statement, the amount as mentioned in Clause 4, will be secured. So far as Clause (5) of the impugned order is concerned, the Petitioner can seek an appropriate relief from the DRAT when their application for waiver will be heard and disposed of by the DRAT. All contentions raised by the Petitioner and the Respondent in this petition are kept open. We request the Chairman, DRAT to hear the waiver application expeditiously, in any case within 4 weeks. We must clarify

that we have not expressed any opinion on merits of the case, and the DRAT may decide the Petitioners' application on merits and in accordance with law. If the Chairman, DRAT is not available at Mumbai, in that case, the Petitioner may approach the Chairman to whom the powers are conferred by the Central Government, either at Calcutta or Allahabad.

7. We are informed by the learned ASG that in the first week of August, 2016 the appointment of the Chairman, DRAT will be made. With this direction, writ petition is disposed of.

Sd/-
[M. S. SONAK, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath