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

WRIT PETITION NO. 2386 OF 2014

**Sushil Motilal Mehta (H.U.F.) } **
and Ors. } Petitioners
versus
The Royal Bank of Scotland N. V. }
and Ors. } Respondents

Mr. Rohan Cama with Mr. T. N. Tripathi, Ms. Sapna Rachure i/b. M/s. T. N. Tripathi and Co. for the petitioners.

Mr. Kazan Shroff with Mr. Vikash Kumar i/b. Mr. Anil T. Agarwal for respondent no.1.

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

DATED :- JULY 22, 2016

P.C. :-

By this petition under Article 226 of the Constitution of India, the petitioners are challenging an order passed by the learned Chairperson of the Debt Recovery Appellate Tribunal, Mumbai (for short "the DRAT").

2) Appeal No. 47 of 2010, which was filed by the petitioners/original appellants was directed against the order dated 4th January, 2010 of the learned presiding officer of the Debt Recovery Tribunal (DRT) No. III, Mumbai in Securitisation Application No. 107 of 2009.

3) Admittedly, the petitioners/original appellants had moved the above securitisation application invoking section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

4) After hearing both sides and perusing the entire record, by a detailed judgment and order, that appeal was dismissed.

5) Further appeal is provided against such an order by section 18 of the SARFAESI Act.

6) The petitioners were advised to move an application seeking dispensation of the condition of pre-deposit and waiver thereof or appropriate reduction in that deposit.

7) Our attention is invited to sub-section (1) of section 18 of the SARFAESI Act with three provisos by Mr. Cama to submit that the petitioners are strangers to the deal between the borrowers and guarantors so also the bank. In these circumstances, when they preferred an appeal, they are not obliged to comply with this condition of pre-deposit. The proviso read in proper perspective would mean that it is for the borrower who can be called upon to comply with the condition.

Alternatively and without prejudice, assuming that such condition can be imposed even on the present petitioners and appellants in appropriate cases, still, the said parties can request the tribunal to dispense with that condition or for the reasons to be recorded in terms of the third proviso to sub-section (1) reduce the amount to not less than 25%.

8) In the present case, the petitioners, by a detailed application, pointed out that they are strangers to the alleged demand of the bank. They are not liable to pay any amount to the bank. They are neither borrowers, mortgagors or guarantors. Therefore, they need not comply with any condition. Alternatively and without prejudice, it was pointed out that the beneficiaries of a private Trust being minors, it is impossible for them to comply with such condition. There is in fact a categoric averment, according to them, that the original appellant nos. 2 and 3 Trust have not borrowed any amount from respondent no.1 bank. The permission to mortgage the property or to enforce it was not obtained from the competent court as the minors were having a share in the property. It was also submitted that there is a financial hardship inasmuch as none of these minors and for whose benefit the Trust has been created have any substantial income nor they are income-tax payers so as to comply with a

onerous condition. There are other properties which the bank is not proceeding against. That is why on both counts, namely on strong *prima facie case,* balance of convenience so also financial hardship that the petitioners sought a waiver of the condition. None of these contentions, according to Mr. Cama have been dealt with. In these circumstances, he would submit that the impugned order suffers from total non application of mind. It is contrary to law as well.

9) Mr. Cama relies upon two judgments; one in the case of *Maya Devi (Dead) through LRS. vs. Raj Kumari Batra (Dead) through LRS. And Ors.*[1] to emphasise the assignment of reasons and recording them so as to enable a higher court to consider whether there was any material which prevailed upon the court below to pass a particular order. Secondly, on para materia provisions, in the case of *Sterlite Technologies Ltd. vs. Union of India*[2], this court in para 6 had held that when there is a power to dispense with the condition like this, then, that power must be exercised consistent with principle of law that whether there is a *prima facie* case and whether the litigant has made out a case of financial hardship or otherwise.

1 **(2010) 9 SCC 486**
2 **2012 (2) MLJ 112**

10) Upon perusal of the entire petition and all the annexures thereto, we are not in agreement with Mr. Cama. The DRAT had before it a further appeal under section 18 of the SARFAESI Act of the petitioners before us. The further appeal challenges the order passed by the DRT in the securitisation application.

11) The DRT, on due consideration of the materials placed before it, concluded that the evidence available goes to show that the property in question is not the exclusive property of the minors. Secondly, the *Karta* of HUF is competent to create charge and dispose of the property for the benefit of the minor or for the family needs. That is why, the charge created in favour of the bank is proper and valid. The securitisation application is not filed by the *karta* of HUF. The evidence available shows that respondent nos. 3 and 4 to the securitisation application executed the registered mortgage and the partnership firm in which respondent nos. 3 to 6 are the partners were the confirming parties to the said mortgage. The mortgage created was confirmed vide letter dated 15th September, 2005. Thus, the present applicants and respondent nos. 2 and 3 have colluded with each other and in bringing about such an appeal. The entire finding and on fact, therefore, is that this is not an appeal or a

request by the strangers to the transaction. Once such a finding is recorded in the main order and reasons assigned, then, we do not think that on a dispensation application, the appellate tribunal was required to record any detailed reasons, as desired by Mr. Cama. There was no *prima facie* case, thus, made out for dispensation of the condition given a finding of fact recorded against the petitioners after a detailed hearing. The appellate tribunal thought it fit to impose the impugned condition as the securitisation application was already dismissed and with above detailed findings. There was no merit even *prima facie* in the contention that the strangers to the transaction have been proceeded against and they are prejudiced on account of the act of the bank. Rather the findings are that there is a huge debt and outstanding. The notice under section 13(2) of the SARFAESI Act was issued way back in 2008 raising a demand of Rs.16.45 crores. That debt goes on mounting. The impugned order was passed on 24th July, 2014, which imposed a reasonable condition of deposit of Rs.4,50,00,000/-. We are, therefore, of the opinion that the appellate tribunal acted reasonably and fairly while not non-suiting the petitioners.

12) In the above circumstances, we do not think that even going by the principles in the cases of *Maya Devi* (supra) and

Sterlite Technologies Ltd. (supra) we can interfere in writ jurisdiction. Our jurisdiction is extraordinary, equitable and discretionary. We do not intend to assist such litigants who are abusing the process of the court. The writ petition is, therefore, dismissed.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)