

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

5 WP/2765/2017

...
MRS. SANYOGITA N. JADHAV
VERSUS
THE UNION OF INDIA AND OTHERS.

...
Advocate for Petitioner : Mr.N.B.Suryawanshi
Advocate for Respondent No.1 : Mr.A.G.Talhar
Advocate for Respondent No.2 : Mr.S.S.Deve

...
**CORAM : R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

DATE: 25th SEPTEMBER, 2017

PER COURT :-

1) Learned counsel for the petitioner on instructions states that his client does not press the prayers in the Writ Petition, except prayer No.B-3 and submits that since the petitioner could not have created any mortgage in respect of the property in question in favour of the Bank, this issue cannot be appropriately decided by the Debts Recovery Tribunal in the appeal provided under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and thus, this petition be entertained.

2) Learned counsel appearing for the Bank on the other hand submits that the only remedy available to the petitioner to impugn the notice issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would be by way of appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 before Debts Recovery Tribunal. He submits that issue now raised by the petitioner by carrying out an amendment to this petition that the property in question could not have been mortgaged at all in favour of the Bank also can be decided by the Debts Recovery Tribunal.

3) In our view, the remedy is to file appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and not this Writ Petition. The issue raised by the petitioner at this stage that the land in question could not have been mortgaged at all in favour of the Bank, can be decided by the Debt Recovery Tribunal.

4) In our view, the petition is misconceived and accordingly dismissed. Since other prayers are not pressed, we are not required to go into those prayers in this Writ Petition. No order as to costs.

5) In view of the dismissal of the Writ Petition, pending Civil Applications if any, are also disposed of.

(SUNIL K. KOTWAL, J)

(R.D. DHANUKA, J)

spt