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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9339/2017

M/s Ashwin Tractors,
through its proprietor Ashwin
Shantaram Patil & another.
...Petitioners..

Versus

The State of Maharashtra & others.
...Respondents...

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Shri D.B. Thoke, Advocate for petitioners.
Shri D.R. Kale, AGP for respondent nos.1 to 3.
Shri A.C. Mishra, Advocate for respondent no.4.

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CORAM: S.C. DHARMADHIKARI &
SANGITRAO S. PATIL, JJ.

DATE: 21.07.2017

ORDER :

- 1] The petition is not on Board. Taken on Board at the request of learned counsel for the petitioners in view of the urgency expressed and made out.
- 2] It is stated that the petitioners were served with a communication informing them that possession of the secured assets would be taken today. The learned counsel for the petitioners submits that these are shops and from which business is being carried on by the parties in possession. Further, presently the post of the Presiding

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Officer of the Debt Recovery Tribunal at Aurangabad is vacant. The petitioners may require some time so as to move the Presiding Officer of DRT at Pune. The DRT at Pune would take only urgent matters. Hence, he would submit that some protection be granted and the petitioners would not press the petition then.

3] The learned Advocate appearing for the respondent no.4 - bank is present and he says that presently the petitioners owe Rs.70,00,000/- and more to the respondent no.4 - bank. They have no intent of paying the money though the loan was advanced in the year 2012. Hence, the petition be dismissed.

4] After having heard both the sides and finding that there is an alternate and efficacious remedy of appeal u/s 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which can be availed of, we are not inclined to entertain this petition. However, since the petitioners are apprehending dispossession of the occupants of the shops, who have been inducted by the petitioners and these being the commercial premises, to balance the rights and equities, in the event the

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petitioners deposit a sum of Rs.35,00,000/- (rupees thirty five lakhs only) with the respondent no.4 – bank without prejudice to their rights and contentions and equally accepted without prejudice to the bank's rights and contentions, the bank should not take possession of the secured assets till the DRT passes the requisite orders in the appeal.

5] In order to enable the petitioners to arrange for and make this deposit, we direct that for a period of four weeks the order passed u/s 14(1) by the Collector and District Magistrate, Jalgaon, shall not be enforced.

6] This order is passed on the footing that the petitioners retain absolute control over the premises and it is stated that none other than the persons inducted by them are carrying on business therefrom.

7] Needless to clarify that if the petitioners fail to deposit the amount as directed above, present order would stand automatically vacated.

(SANGITRAO S. PATIL, J.) (S.C. DHARMADHIKARI, J.)