IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICITON

WRIT PETITION NO.5729 OF 2017

Ms.Jyoti Bhatt ... **Petitioner**
V/s.
Allahabad Bank ... **Respondent**

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Mr.Vivek V. Phadke, Advocate for the Petitioner.
Mr.V.N.Ajikumar, Advocate for the Respondent/Bank.

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CORAM : B. P. COLABAWALLA &
A. M. BADAR JJ.
(VACATION COURT)

DATED : 2nd June 2017.

P.C.

1 This writ petition has been filed challenging the order dated 27th May 2017 passed by DRT-II, Mumbai in Securitisation Application No.13 of 2017. The petitioner has approached this Court directly in its writ jurisdiction, as it is the case of the petitioner that despite an appeal being provided under the provisions of the Securitisation Act, the DRAT is on leave. After the matter was argued for some time, the learned counsel appearing on behalf of petitioner submitted that the petitioner who is a mortgagor/guarantor of the principal borrower namely Mahuli Construction Company – a partnership firm under the

Indian Partnership Act, 1932 is willing to pay the entire dues of the respondent Bank in six equal monthly installments. The learned counsel appearing on behalf of the respondent Bank submitted that the dues of the respondent Bank as on 30th May 2017 are Rs.2,71,84,573/- and should be paid in three equal monthly installments. After hearing both sides, as far as the figure is concerned, both parties have agreed that an amount of Rs.2,70,00,000/- shall be paid by the petitioner to the respondent Bank in a full and final settlement.

2 We feel that, despite the opposition from the Bank, interest of justice would be served, if this amount of Rs.2,70,00,000/-is paid to the respondent Bank in six equal monthly installments commencing from 30th June 2017. The other partners of the principal borrower namely M/s.Mahuli Construction Company are also present in Court. Despite this petition being filed only by one of the mortgagors/guarantors, the other mortgagors/guarantors/partners are also present before us. They are Mayaben H. Bhatt, Rohit H. Bhatt, Pallavi H. Bhatt, Bhavesh H. Bhatt and Sonal H. Bhatt. All these mortgagors/guarantors/partners have also agreed to this order and to the figure of Rs.2,70,00,000/- to be paid to the respondent Bank in six equal monthly installments.

3 In case of any default in payment of any of the installment as above, the respondent Bank shall be at liberty to

take further steps in respect of secured assets under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the event of default, the respondent Bank shall be entitled to recover the sum of Rs.2,70,00,000/- together with interest thereon at the rate of 15% per annum from 1st June 2017 till payment and/or realisation after giving credit for installment that have already been paid. The borrower partnership firm as well as its partners/mortgagors/ guarantors undertake to this Court that they have no objection if this course of action is taken. All of them further undertake to this Honourable Court that they will hand over peaceful and vacant possession of Flat No.B/17 within a period of seven days of committing a single default in payment of any installment.

4 In the event, the entire amount of Rs.2,70,00,000/- is paid within the aforesaid time schedule, then the respondent Bank shall return/hand over possession of the secured assets along with original title deeds and a No-dues certificate. In the meanwhile, until the installments are being paid, the respondent Bank shall not put up for sale the secured asset of which they have already taken possession, namely Flat No.B/104, 1st Floor, Shree Naman Towers-B, Near East West Fly over of S.V.Road, Kandivali (West), Mumbai – 400 067. The petitioner is at liberty to source a buyer for this secured asset for the purposes of paying of the dues of the respondent Bank.

5 In view of this order, the Securitisation Application No.13 of 2017 is disposed of. Further the parties have agreed that this order shall be a decree in the original application filed by the respondent Bank and if any default is committed, the respondent Bank shall be at liberty to execute this order by obtaining recovery certificate in terms of this order and thereafter proceed further in accordance with law.

6 The petitioner as well as the other mortgagors/guarantors/partners, as mentioned earlier, shall file an undertaking in this Court by 5th June 2017 with a copy to the learned Advocate for the respondent Bank clearly stating that they have agreed to this arrangement as recorded in this order.

7 Writ petition is disposed in the aforesaid terms. Parties to act on an ordinary copy of this order, duly authenticated by the Associate.

(A. M. BADAR J.) **(B. P. COLABAWALLA J.)**