

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 15877 OF 2017

WITH

WRIT PETITION (ST) NO. 15879 OF 2017

1. Mr. Makrand Rajadhyaksha.

Adult Indian inhabitants of Mumbai,
Aged 46 yrs., having address at
'D' 505, D Wing, Ashok Towers,
Dr. S.S. Rao Road, Parel,
Mumbai – 400 012.

2. M/s. P.M. Dimensions Pvt. Ltd.

A Private Limited Company Registered
under the Companies Act, 1956, having
its registered office at B-807, Ashok
Tower, Opp. M.G. Hospital, Parel,
Mumbai – 400 012.

... **Petitioners**

Vs.

**1. Corporation Bank a Body constituted
under the (Acquisition and Transfer
of undertakings Act, 1970)**

Mangladevi Temple Road, Pandeshwar,
Manglore – 575 001 and having its
Branch office situated Mandvi Branch
221/223, Samuel Street, Masjid Bunder,
Mandvi, Mumbai – 400 050.

2. Vandana Rajadhyaksha

3. Madhav G. Rajadhyaksha

both Adult R/at.

At D.505, D Wing, Ashok Towers,

Dr. S.S. Rao Road, Parel,
Mumbai – 400 012.

4. Union of India,
Thru Ministry of Finance,
New Marine Lines,
Mumbai

... Respondents

**Mr. Ram Upadhyay, i/b Law Competere Consultus for the
Petitioners in both Writ Petitions.**

**Vinaya Chavan, i/b Vinaya Chavan & Co for Respondent No.1 in
both Writ Petitions.**

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATE : 15 JUNE 2017.**

J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. The Petitioner No. 1 is the Director of the Company whereas Petitioner No. 2 is the borrower Company. Respondent No. 1 is the Nationalised Bank who had granted overdraft facility against property as security. Respondent No. 2 is the spouse of Petitioner No. 1 and Respondent No. 3 is the father of Petitioner No. 1 and they have been joined as guarantors.

2. The Petitioners have filed the Petitions challenging two demand letters dated 1st October 2015 and 8th October 2015 respectively

which were issued by Respondent No.1 under Sections 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “**SARFAESI Act**”) for non-payment of debts.

3. The Petitioners seek quashing of the respective demand letters on the ground that the action is not in accordance with law and further to stay the action under the SARFAESI Act initiated by Respondent No.1 till the present Petitions are heard as well as to set aside the sale of the flats (secured properties). The Petitioners raise a challenge to the action taken by the Respondent No.1 under the SARFAESI Act as being without jurisdiction and contending that the SARFAESI Act does not apply to an account which cannot be classified as NPA and/or to a case where the amount due is less than 20% of the principle amount and interest thereon, placing reliance upon Section 31(j) of the SARFAESI Act. The Petitioners have in the Petitions relied on the facts contained in two prior Writ Petitions No. 2892 and 2893 of 2017 challenging an order of Debt Recovery Appellate Tribunal (for short “**DRAT**”) which Petitions are pending before this Hon'ble Court.

4. The counsel for Respondent No.1 has raised an issue on the maintainability of the Petitions. The counsel has contended that the demand letters which have been impugned in the respective Petitions have been responded to by the Petitioners and following which action has been taken by Respondent No.1 bank under Section 13(4) of the SARFAESI Act which was challenged by the Petitioners in the Debt Recovery Tribunal (DRT) vide Securitisation Application No. 421 of 2016. The Petitioners had filed the Securitisation Application for seeking urgent relief and also for condonation of delay in filing the Application. The learned Presiding Officer of the DRT was pleased to reject the application of condonation of delay vide order dated 16th January 2017. The Petitioners have challenged the said order before the DRAT. The Petitioners prior to filing the Appeal, had sought necessary protection and for which the Petitioners filed Writ Petitions Nos. 576 of 2017 and 577 of 2017 before this Court challenging the order of the DRT dated 16th January 2017 and the possession notices issued by the Respondent No.1 bank. Respondent No.1 had sought to take possession of the secured properties of the Petitioners. The counsel for Respondent No.1 has further submitted that an order has been passed by this Court dated 17th January 2017 wherein the

Division Bench of this Court has disposed of the Petitions by directing the Respondent No.1 not to enforce the possession for a limited period, with a view to facilitate the Petitioners to approach the DRAT for re-dressal of their grievances in accordance with law. The counsel for Respondent No.1 has submitted that the Petitioners had not challenged the respective demand letters which have been impugned in the present Petitions, in the prior Petitions. The Petitioners had also been granted liberty to approach the DRAT to redress their grievances pursuant to the action taken by the Respondent No.1 under Section 13(4) of the SARFAESI Act. The Petitioners have in fact availed of such liberty granted by filing Appeal Nos. 44 and 45 of 2017 before the DRAT. The counsel for Respondent No.1 has contended that the Petitioners if at all aggrieved by the respective demand letters ought to have redressed their grievances before the DRT/DRAT, which would be the alternate forum available to the Petitioner under the SARFAESI Act.

5. Having considered the arguments on the issue of maintainability of the present Petitions, we are of the view that the Petitioners have an alternate forum available to them viz. DRAT, which is already seized of

the matter. The Petitioners have also failed to challenge the demand notices in the prior Writ Petition Nos. 576 of 2017 and 577 of 2017 filed in this Court and by doing so, it is now not open for the Petitioners to challenge the respective demand letters in the present Petitions. We are of the considered view that the Petitioners have belatedly challenged the demand letters issued on 1st October 2015 and 8th October 2015 respectively in the year 2017, despite the demand letters having been acted upon by the Respondent No.1 and the measures have been taken for possession of the secured property.

6. In view of the above, we hold that the present Petitions are not maintainable and accordingly the Petitions are dismissed. The Petitioners are directed to pay costs of Rs.1,00,000/- to the Maharashtra State Legal Service Authority.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)