IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7239 OF 2017

**Mrs. Karishma Teckchandani
Thru Power of Attorney holder,
Shri Suresh Teckchandani,
Age Adult 47 years,
R/o. B-603, Casurina,
Evershine Green, Adarsh Nagar,
Link Road, Andheri West,
Mumbai 400 053. ... Petitioner**

Vs.

**1. M/s. L & T Housing Finance Ltd.,
A Finance Company incorporated
under the provisions of Companies
Act, having its Office at:
The Metropolitan, 3rd Floor,
C-26/C-27, E-Block, Bandra (E),
Mumbai 400 051.**

**2. Mr. Ajay Wasan,
An Adult, Occ. Business,
R/at. A-1201, Willow Towers Vasant,
Garden Swapna NGR Mulund,
Mumbai 400 080. ... Respondents**

Mr. Pankaj Kansara, with Mrs. Manjula Rao, Mr. Shetty, i/b Kansara & Thanekar, for the Petitioners.
Uma S. Fadia, with S.N. Fadia, Adv for the Respondent No.1.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATE : 4 JULY 2017.**

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

1. The Petitioner by the present Petition has challenged the order dated 28th June 2017 passed by the Debts Recovery Appellate Tribunal ("**DRAT**") directing the Petitioner to deposit an amount of Rs.3 Crores within three days, under Section 18 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for short ("**SARFAESI Act**"). The Petitioner claims to be neither a borrower nor guarantor and has claimed that the SARFAESI Act is not applicable to the Petitioner. The Petitioner claims that she had purchased the shop (secured asset) which was mortgaged by Respondent No.2 to Respondent No.1. An NOC dated 11th March 2016 had been issued by the Respondent No.1 to the Petitioner wherein Respondent No.2 was allowed to sell the shop to the Petitioner subject to the terms and conditions mentioned in the NOC.

2. Respondent No.1 in December 2016 had on account of non-payment of debts taken symbolic possession of the shop under Section 13(4) of the SARFAESI Act. The Petitioner had filed an application under Section 17 of the SARFAESI Act in the Debt

Recovery Tribunal ("**DRT**") challenging the action of Respondent No.1 under Section 13(4) of the SARFAESI Act. On 10th April 2017, an application was moved by the Petitioner restraining Respondent No.1 from taking possession of the shop. An order came to be passed by the DRT -II granting a status quo till next date.

3. On 12th June 2017, the DRT-II vacated the said order dated 10th April 2017 and directed Respondent No.1 to issue one week prior notice to the Petitioner or his Advocate of the fixing the date of taking physical possession of the secured assets. Being aggrieved by the order dated 12th June 2017, the Petitioner filed an Appeal under Section 18 of the SARFAESI Act and waiver application before the DRAT challenging the said order. The DRAT by the impugned order dated 28th June 2017 rejected the waiver application and directed the Petitioner to deposit 50% of the Section 13(2) Notice amount in order to entertain the Appeal. The Petitioner was directed to deposit the amount within three days and status quo order which was granted on the previous date, was extended till 3rd July 2017 provided that the amount was deposited on or before 3rd July 2017.

4. Shri Kansara, learned counsel appearing for the Petitioner has tendered the impugned order dated 28th June 2017, which had not been annexed to the Petition filed on 29th June 2017. Shri Kansara also filed an Affidavit seeking amendment of the Petition in order that the impugned order could be annexed to the Petition. Shri Kansara has contended that the Petitioner was aggrieved by the impugned order as she is neither a borrower nor a guarantor and yet has been directed by the impugned order to deposit 50% of the notice amount. Shri Kansara has further contended that by the impugned order, the DRAT has only extended status quo till 3rd July 2017 i.e. for a period of three days so as to enable the Petitioner to comply with the conditional order of deposit of the amount determined by DRAT. The possession of the secured asset was to be taken on the date of the impugned order and considering the request of the Petitioner, the status quo was extended. Shri Kansara has submitted that the impugned order ought not have been passed as Section 18 of the SARFAESI Act apply only to a borrower or guarantor and the Petitioner was neither.

5. Smt. Uma Fadia, the learned counsel appearing on behalf

of Respondent No.1 has submitted that the impugned order dated 20th June 2017 has been correctly passed by the DRAT and that Section 18 of the SARFFAESI Act was mandatory and that the Petitioner had purchased the secured asset i.e. shop from Respondent No.2 pursuant to the NOC which had laid down the terms and conditions. The NOC had expressly mentioned that a loan is being availed of by the Petitioner against the property and that 1st Respondent's lien is to be marked on the registered Sale Agreement between the Petitioner and Respondent No.2 and mentioned in the housing records and share certificate.

6. Shri Kansara in turn has contended that the sale of the secured asset i.e. shop was at the behest of Respondent No.1 and in support thereof has relied upon the NOC. Shri Kansara has also relied upon a prior letter dated 31st October 2015 addressed by the Petitioner to Respondent No.1, wherein it is mentioned that certain amount had been paid to Respondent No.1 for purchase of the shop and had also mentioned about the loan against the shop being availed of by Petitioner from Respondent No.1 bank. The said letter also refers to a cheque of Rs.50 lakhs which was issued by the Petitioner

and which was to be deposited subject to the acceptance and confirmation of the Sale Agreement on the terms and conditions mentioned in the letter.

7. Having considered the arguments of both sides, we are of the view that the impugned order dated 28th June 2017 cannot be found fault with as the provisions of Section 18 of the SARFAESI Act are mandatory and the Petitioner having filed an Appeal from the order of the DRT cannot claim immunity from the mandatory provision. We are also of the considered view that a mere perusal of the impugned order would show that the notice under Section 13(2) of the SARFAESI Act had been issued by the Respondent No.1 bank and the amount due was a sum of Rs.6,55,24,003.29 on 27th July 2016. The impugned order has also correctly held that the purchase agreement of the secured asset i.e. the shop had been entered into by the Petitioner with the Respondent No.1 on her own accord and the Petitioner cannot contend that she has suffered loss due to the agreement and / or claim exemption from making the statutory deposit for entertaining the appeal preferred against the order of the DRT. We are also of the view that the letter dated 31st October 2015

relied upon by the Petitioner and the NOC dated 11th March 2016 only goes to show that the Petitioner has entered into the purchase agreement with Respondent No.2 on her own accord. It is subject to the terms and conditions imposed by Respondent No.1 and from which it can be deduced that amounts are due from the Petitioner against the shop. We are of the view that the mandatory provision i.e. Section 18 of the SARFAESI Act would in any event apply to the Petitioner.

8. Considering the above we are of the view that, there is no merit in the Petition and that the Petition seeking quashing and setting aside of the impugned order dated 28th June 2017 is accordingly dismissed.

9. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.) **(B.R. GAVAI J.)**