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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 11 OF 2017

Arfat Riyaz Faruqui and Anr.	Petitioners
Vs.	
New India Co-operative Bank Limited and Ors.	Respondents

Ms. Aparna Shinde for the Petitioners

Mr. Umashankar Upadhyay, AGP for Respondent No.5

Mr. Vatsal Shah a/w. Mr. Dipak Khilari i/b. MMK Law Associates for
Respondent No.1

**CORAM : R.M. BORDE &
A.S. GADKARI, JJ.**

DATE : JANUARY 04, 2017

P.C. :

1. Not on Board. Upon mentioning, the matter is taken on the Board.

2. The Petitioners have received a notice issued by Respondent No.1 Bank for enforcing the possession of the flat being Flat No. 704, 7th Floor, 'A' Wing, Building No.6, Saki Paradise Co-operative Housing Society Ltd., Saki Vihar Complex, Off. Saki Vihar Road, Sakinaka,

Mumbai – 400 072, which is claimed to be a secured assets. The notice has been served on the Petitioners yesterday and the Petitioners apprehend that Respondent No.1 Bank would secure possession of the secured assets today. The Petitioners have an alternate efficacious remedy as provided under section 17 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). With a view to afford an opportunity to the Petitioners to approach the Appellate Forum under section 17 of the SARFAESI Act, we feel it appropriate to grant a limited protection to the Petitioners without considering the merits of claim raised by the Petitioners in this petition and probable defence raised by the Respondents. The Respondents are directed not to take coercive steps of enforcing the possession over the secured assets for a period of 15 days to enable the Petitioners to approach the DRT which is an alternate efficacious remedy as provided under section 17 of the SARFAESI Act.

3. It is specifically clarified that we have not considered the merits of the case of the Petitioners and it would be open for the DRT to consider the claim of the Petitioners on merits and in accordance with law as well as on consideration of the defence that would be raised by Respondent No.1 Bank. The DRT need not be influenced by the limited interference caused by this Court in the instant petition and shall take decision independently. The writ petition is disposed of in the aforesaid terms.

[A.S. GADKARI, J.]

[R.M. BORDE, J.]