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

WRIT PETITION NO.802 OF 2017

Jhakaria Enterprises .... Petitioner
Vs.
Bank of Maharashtra & Others .... Respondents

Mr. Aloukik Pai with Mr. Tejas A. Luniya i/by
M/s. Thodur Law Associates for the Petitioner.

Ms Medha Rane for Respondent No.1.

CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.

DATE : APRIL 07, 2017

P.C:

1. After having heard Mr. Pai, appearing for the petitioner, we do not think that we can entertain a writ petition against the order dated 18-3-2017, which has been passed by the in-charge Presiding Officer of the Debts Recovery Tribunal-II, Mumbai. This order is passed on an application styled as Review Application No.1 of 2017. This review application sought review of an order passed on 1-2-2017 by the

Presiding Officer of the Debts Recovery Tribunal on an interim application. That interim application was filed in Securitisation Application (S.A.) No.99 of 2016.

2. The interim relief sought was an order of injunction restraining the Bank/first respondent before us from taking any further measures including physical possession of the property.

3. The argument is that, now the review application is decided and against which no appeal would lie to the Debts Recovery Appellate Tribunal. The Debts Recovery Appellate Tribunal cannot consider a challenge to an order on a review application and which power of review is not exercised in terms of sub-section (7) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act") but under Clause (e) of sub-section (2) of Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the RDDBFI Act"). True it is that sub-section (7) of Section 17 of the SARFAESI Act brings into play the RDDBFI Act

and Section 22, sub-section 2(e) thereof for a limited purpose but the order is clearly not traceable to the SARFAESI Act. Hence, there is no remedy of appeal. Alternatively and without prejudice and even if appeal is provided and available, still the nature of the order is such that it refuses interim injunction to the petitioner before us, who is aggrieved by the auction sale of the property. Now, if the auction sale of the property is confirmed, the properties then would go in the hands of the auction purchaser. It will be difficult for the petitioner to get a reversal of this situation in the event it is able to convince the Tribunal to quash the sale. Therefore, some protection be granted and in the form of a restraint against obtaining physical possession or handing over such properties which are sold to the auction purchaser.

4. The first submission of Mr. Pai has no merit. It is not disputed that the order passed by the Debts Recovery Tribunal on an interim application initially on 1-2-2017 is traceable to Section 17 of the SARFAESI Act, for that order is made on an Interim Application No.854 of 2016 in Securitisation Application

No.99 of 2016 (Exhibit-6). When the Tribunal entertained the review application seeking a review of such an interim order, the Tribunal was aware of sub-section (7) of Section 17 which says that, save as otherwise provided in the SARFAESI Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

5. Mr. Pai could not point out to anything in the SARFAESI Act which would enable exercising a power of review save and except as above. Therefore, in terms of Section 22(2)(e) of the RDDBFI Act r/w the rules thereof, this order which is passed on the review application would cause a merger. Meaning thereby, the initial order of 1-2-2017 now merges with the order dated 18-3-2017.

6. When such a position is obtaining and from the record, then, appeal under Section 18 to the Appellate Tribunal is available, that is against any order passed by the Debts

Recovery Tribunal under Section 17 of the SARFAESI Act. The appeal is available to any person aggrieved and which undoubtedly includes the petitioner. In these circumstances, we do not think that the first contention of Mr. Pai has any merit.

7. As far as the second contention is concerned, once the appeal is provided and the Debts Recovery Tribunal can be approached for an expeditious hearing of the securitisation application or the Debts Recovery Appellate Tribunal can be approached to challenge the initial as also the order on review, then, such alternate and equally efficacious remedies enable us to dispose of this writ petition. The writ petition is accordingly disposed of by clarifying that we have expressed no opinion on the merits of the case.

8. At this stage, a request is made to continue the order passed by the Debts Recovery Tribunal on 1-9-2016, until it was vacated on 1-2-2017, for a further period of six weeks to enable the petitioner to apply for appropriate reliefs in the proceedings which it now wishes to initiate.

9. The request is opposed by the first respondent-Bank. It is urged that no amount is paid and a defaulter is now seeking such a discretionary relief. The debt has mounted to about Rs.10 Crores approximately.

10. Having noted this request of Mr. Pai and finding that the conduct of the petitioner is such that it does not deserve any discretionary and equitable relief, the request is refused.

(PRAKASH D. NAIK, J.) (S.C. DHARMADHIKARI, J.)