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

**WRIT PETITION NO. 1187 OF 2017**

**WITH**

**NOTICE OF MOTION (ST). No. 313 OF 2017**

**WITH**

**NOTICE OF MOTION (ST). No. 382 OF 2017**

**IN**

**WRIT PETITION NO. 1187 OF 2017**

**Shantilal Jain & Ors.** **...Petitioners**

*Versus*

**Punjab National Bank & Ors.** **...Respondents**

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Mr. Rahul Narichania, Senior Counsel, a/w Ms. Sapna Rachure, i/by M/s. T.N. Tripathi & co., for the Petitioners.

Mr. Pankaj Vijayan, i/by M/s. Intra Legal, for the Respondent No. 1.

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**CORAM : B.R. GAVAI AND**
**RIYAZ I. CHAGLA, JJ.**

**DATE : 30 June 2017**

**ORDER :**

1. The Petitioners were availing certain credit facilities from Respondent No. 1 in respect of their business, which comprises of manufacturing cotton and polyester fabrics for exports. The Petitioners claimed that they had suffered huge losses in the business due to change in Government policy in the year 2011-12. Respondent No. 1 had stopped the operation in their account and classified the account as NPA on 21 November 2012. The Respondent No. 1 had issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "***SARFAESI Act***" in short) for aggregate sum of Rs. 32.00 Crores on 20 November 2013. Respondent No. 1 took formal possession under Section 13(4) of the SARFAESI Act on 25 March 2014.

2. Petitioners had filed a Securitisation Application on 22 April 2014 challenging the demand notice and possession notices. An interim order came to be passed by Debts Recovery

Tribunal -III on 17 November 2014 directing the Petitioners to deposit Rs. 5.5 Crores on or before 8 December 2014 and further 5.5 Crores on or before 29 December 2014. The Petitioners filed an Appeal on 1 December 2014 before the Debts Recovery Appellate Tribunal (for short "*D.R.A.T.*", Mumbai) challenging the interim order dated 17 November 2014, as the Petitioners had received notice dated 15 January 2015 issued by the Assistant Registrar fixing date for taking possession of the office comprises at Office No. 2A, First Floor, Jai Hind Co-operative Society Limited, Building No. 1, Bhuleshwar, Mumbai – 400 002. On 22 January 2015, the Petitioners moved D.R.A.T. seeking urgent circulation for taking up the matter for hearing on 23 January 2015, which was declined.

3. The Petitioners filed Writ Petition No. 305 of 2015 in this Court, wherein an order was passed directing Respondent No. 1 not to take physical possession till 29 January 2015, which was extended till 30 Jan 2015. Thereafter, the order came to be

passed by this Court on 30 January 2015 directing the D.R.A.T. to decide the Application for *ad-interim* relief preferred by the Petitioners as expeditiously as possible. This Court directed the Respondent No. 1 to give 72 hours notice to the Petitioners before taking possession. As D.R.A.T. was not sitting and/or the matter could not be taken up due to the ill health of Chairperson of D.R.A.T., the Petitioner applied for clarification of the order dated 30 January 2015, when this Court clarified and directed Respondent No. 1 to give Petitioners 72 working hours notice before taking further action. The Petitioners were served with the notice No. 1697 of 2015 and 1698 of 2015 dated 20 April 2015 on 2 May 2015 to take physical possession of office premises No. 2A on 8 May 2015 and Flat No. 181 on 11 May 2015. The Petitioners filed Writ Petition (L) No. 1362 of 2015 wherein this Court granted order of *status quo* for a period of two weeks with liberty to the Petitioners to move D.R.A.T., Chennai. The D.R.A.T. in turn disposed of the Appeal with a direction to the learned Tribunal to decide the Securitisation Application expeditiously. Respondent No. 1 issued notice for sale of Flat No. 181 at a reserved price of Rs. 925 Lakhs which could not materialise. The Petitioners had submitted an OTS to settle the dues of the bank and had deposited Rs. 25.00 Lakhs and Respondent No. 1 sanctioned the OTS for Rs. 18.00 Crores.

4. The Petitioners have claimed that the OTS was acted upon by the parties and Respondent No. 1 issued a NOC for sale of securities as well as certain properties under the OTS. Petitioners paid a further sum of Rs. 288.29 Lakhs. An order was passed by the Debts Recovery Tribunal on 3 September 2016 directing that possession will not be taken of the subject flat till 30 September 2016. The Petitioners had filed Writ Petition No. 177 of 2017 as according to the Petitioners, Respondent No. 1 had insisted on payment of entire OTS amount by 30 September 2016. Meanwhile, the D.R.T. by an order dated 25 November 2016 dismissed the Securitisation Application No. 30 of 2015 filed by the Petitioners and this was challenged by the Petitioners by filing Appeal No. 83 of 2017 before the D.R.A.T., Mumbai. An order came to be passed by this Court on 22

February 2017 dismissing the Writ Petition No. 177 of 2017 filed by the Petitioners, wherein the Petitioners had sought directions to the Respondents to issue NOC for the sale of the residential flat at the price of Rs. 966.00 Lakh and to grant 60 days time to pay entire price of the assets. It has been recorded in the said order that the Petitioners had not complied with the OTS agreement and the Division Bench has in paragraph 3 observed that "we are indeed surprised to note, as to how bank officials arrived at a settlement with the borrower for a paltry amount of Rs. 18.00 Crores as against the huge dues of Rs. 56,31,65,627/-". The Division Bench of this Court has directed that the management of the Respondent No. 1 bank as well as Reserve Bank of India shall securitise the matter and examine the worthiness of the offer to settle the account at Rs. 18.00 Crore as against recoverable dues of more than 56.00 Crores.

5. The Petitioners filed Miscellaneous Application No. 336 of 2017 for waiver of deposit under Section 18 of SARFAESI Act. An impugned order came to be passed by D.R.A.T., Mumbai

on 5 April 2017 directing the Petitioners to deposit 50 percent amount demanded by Respondent No. 1 vide notice under Section 13(2) of SARFAESI Act.

6. The present Petition challenges the impugned order of D.R.A.T. dated 5 April 2017 and seeks interim relief viz. to direct Respondent No. 1 to issue NOC for sale of the assets at Rs. 966.00 Lakhs and grant 60 days to pay the entire price of the assets and to restrain the Respondents from taking steps pursuant to the impugned demand notice dated 20 November 2013 and the order passed under Section 14 of the Act in C.C. No. 303/S.A./2014. The Petitioners have taken out a Notice of Motion in the Petition in above terms.

7. Shri. Narichania, the learned Senior Counsel for the Petitioners has submitted that the Petitioners should be permitted to sell the secured assets in order to satisfied the dues of Respondent No. 1 Bank. Shri. Narichania has submitted that the Court should grant time to the Petitioners for the sale of the

secured assets and until then, the Respondents should be restrained in taking steps pursuant to the impugned demand notice dated 20 November 2013 and the order passed under Section 14 of the SARFAESI Act.

8. Shri. Vijayan, the learned Counsel for the Respondent No. 1 Bank has referred to order dated 22 February 2017 passed by the Division Bench of this Court in Writ Petition No. 177 of 2017 filed by the Petitioners wherein they had prayed for similar directions to Respondents to issue NOC for sale of the assets at the price of Rs. 966.00 Lakhs as they have sought in the present Petition. Attention of the Court has been drawn to paragraph 3 of the said order dated 22 February 2017, which has been extracted above. Shri. Vijayan submitted that the Petitioners are once again seeking NOC for sale of these assets which had already been considered by this Court in the previous Petition and rejected. Shri. Vijayan has submitted that the demand notice was issued way back on 29 November 2013 and the order has been passed under Section 14 of the

SARFAESI Act and that Respondent No. 1 Bank cannot be stalled any further from taking further steps to recover public money.

9. We are of the considered view that the Petitioners have filed this Petition in utter defiance of the order dated 22 February 2017 passed by the Division Bench of this Court, where the identical relief sought was rejected. This Court by the said order had deprecated the conduct of the Bank Officials in arriving at a settlement for a paltry amount against the huge dues of Respondent No. 1 Bank which are public monies and in fact directed the management of the Bank as well as R.B.I. to securitise the matter and examine the worthiness of the offer of the Petitioners. We are of the view that the Petitioners have made out no case to impugn the order dated 5 April 2017 of the D.R.A.T., Mumbai, which has directed the deposit of 50 percent amount as demanded under Section 13(2) notice within four weeks under the mandatory provisions i.e. Section 18 of the SARFAESI Act. We find no infirmity in the order dated 5 April

2017 passed by D.R.A.T., Mumbai. The Appeal of the Petitioners has been dismissed by the subsequent order of the D.R.A.T. dated 4 May 2017, as the Petitioners had failed to deposit the 50 percent amount as directed in the impugned order dated 5 April 2017. The Petitioners by Notice of Motion (L) No. 313 of 2017 filed in the present Petition has sought stay of that order. We are not inclined to entertain the Notice of Motion as we are dismissing the Petition itself.

10. We dismiss the Petition and order costs, which are quantified at Rs. 1,00,000/- (Rupees One Lakh only). The said amount shall be deposited within a period of two weeks with the Maharashtra State Legal Services Authority.

11. In view of dismissal of the Writ Petition, the above Notices of Motion do not survive.

**[RIYAZ I. CHAGLA J.]** **[B.R. GAVAI, J.]**