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

WRIT PETITION (L) NO. 1832 OF 2017

1. Sign Design Private Ltd.
A limited company incorporated under the Companies Act, 1956 and having its registered office at 4 Shree Industrial Estate, 2nd Hasanabad Lane, Santacruz (W), Mumbai 400 054.
AND At
Mehta Niwas, Main Kasturba Road, New Mahabir Jewellers, Borivali (East), Mumbai 400 066. **…Petitioners**

Versus

1. State Bank of India
A banking Corporation constituted under the provisions of State Bank of India (Subsidiary Banks) Act, 1959 having its Bellard Estate Branch office at 265, Sant Niwas, SBS Road, Ballard Estate, Mumbai – 400 038.

2.Mr. Narendra H. Mehta
of Mumbai Indian inhabitant Address at Flat No. 102 'B' Wing, 1st Floor, Navratna CHS Ltd., Ashra Colony, Dattapada, Borivali (East), Mumbai 400 066.

3. Mr. Hukmichand Mehta
R/at Flat No. 101, B Wing, 1st Floor, Navratna CHS Ltd., Ashra Colony, Dattapada, Borivali (East), Mumbai 400 066.

4. Mr. Mithalal H Mehta
R/at. Flat No. 102, B Wing, 1st Floor, Navratna CHS Ltd., Ashra Colony, Dattapada, Borivali (East), Mumbai 400 066.

5. Mrs. Pushpa J Mehta
R/at. Flat No.101, B Wing, 1st Floor, Navratna CHS Ltd., Ashra Colony, Dattapada, Borivali (East), Mumbai 400 066.

6. Mr. Sanjay Agarwal
Adult, Indian, Office at B-6, 402, Kalash Co-Op Hsg. Soc., Sundervam, Opp. New Link Road, Andheri (W), Mumbai 53. **…Respondents**

Mr. Chetan Kapadia, with Mr. Sunil Anant Humbre for the Petitioner.
Mr. Nikhil Salvi, i/b Mr. R.J. Singh Respondent No.1.
Mr. Mayur Khandeparkar, with Mr. Yohann Cooper, i/b Mr. Puneet K. Gogad for the Respondent No.6.

CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATED: 20th July 2017

PC:-

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

1. The Petitioner by present Petition is challenging the impugned order dated 9th June 2017 passed by Debts Recovery Appellate Tribunal ("**DRAT**"). By the impugned order the DRAT had directed the Petitioner to deposit the sale

amount of the secured property viz. Rs.3.51 Crores within six weeks as condition to entertain the appeal.

2. The Petitioner is a borrower from the Respondent No1 bank. The Respondent No.1 had filed a original application before Debts Recovery Tribunal ("**DRT-I**"), Mumbai bearing O.A. No. 67 of 2010 for recovery of the dues against the Petitioner. The recovery certificate was issued pursuant to which the demand notice was issued on 18th June 2013. An order for attachment in respect of the immovable properties of Petitioner No.1 was passed by the DRT. The Petitioner had submitted an OTS proposal for Rs.3.30 Crores for settlement of dues with Respondent No.1. The OTS was accepted by Respondent No.1 bank and time was granted till 10th November 2015 for the Petitioner to pay settlement amount in four instalments and in any event the time would be extended maximum till 10th February 2016 subject to payment of interest. The Petitioner failed to pay amount under OTS and the Respondent No.1 bank approached the District Magistrate to take physical possession. The auction sale was conducted on 5th November 2015 and Respondent No.6 was

declared successful bidder for the property for an purchase amount of Rs.3.51 Crores. The Petitioner No.1 had made an application to set aside the sale on 30th November 2015. The recovery officer rejected the application on 30th December 2015 and granted the extension of time on the request of the auction purchaser subject to payment of 18% interest. The Petitioner filed Appeal No. 1 of 2016 before the DRAT against the order dated 30th December 2015. Interim stay was granted by DRAT on 18th January 2016. The Respondent No.6 thereafter made payment on 20th January 2016 along with payment of 18% interest for the period and deposit the same with learned Recovery Officer on 20th January 2016. The Appeal No. 1 of 2016 was dismissed by the DRT on the ground that the Petitioner failed to deposit the entire amount as per Rule 61 of the second schedule of the Income Tax Rules. The Petitioner filed an appeal before the DRAT against the said order. As the DRAT was vacant, the Petitioner filed Writ Petition No. 1072 of 2016 before this Court. Since the DRAT, Mumbai was resuming, the Court was pleased to extent the stay by six weeks and directed the DRT to decide the appeal in accordance with SARFAESI Act and accepted the Appeal. The learned Chairperson of the DRAT disposed of the waiver application No. 317 of 2016 and directed the Petitioners to deposit the sum of Rs.3.51 Crores in six weeks.

3. The Petitioner being aggrieved by the impugned order has filed this Petition.

4. Shri Chetan Kapadia the learned counsel for the Petitioner has submitted that the impugned order has directed the Petitioner to deposit a large amount of Rs.3.51 Cores which was entire sale consideration of the secured property. Shri Kapadia has submitted that the DRT had deviated from the provisions of the Rules i.e. 57 and 58 of the Income Tax Rules. Shri Kapadia has submitted that the Rules 57 & 58 provided that in the event of auction purchaser failing to comply with the payment terms, the Recovery Officer has no authority and / or jurisdiction to extend time for payment by the purchaser. Rule 57 & 58 also suggest that in the event of the default by the purchaser, the sale ought to be declared as null and void and hence Rule 61 would not be attracted. Shri Kapadia submitted that the Recovery Officer

as well as DRT have erroneously invoked the provisions of Rule 61 and that the said order ought to be set aside.

5. Shri Khandeparkar, learned counsel appearing for Respondent No.6 opposed the Petition. Shri Khandeparkar has contended that the DRT has observed that the amount in the proclamation of sale / terms and conditions as on date of sale is Rs.8,13,90,521/- inclusive of interest and costs for recovery of the amount of secured property sold and that it was auction for Rs.3.51 Crores. Shri Khandeparkar has submitted that the Petitioner will not be caused any prejudice by depositing the amount of Rs.3.51 Crores as directed by the DRAT in the impugned order. Shri Khandeparkar accordingly submitted that, the present Petition ought to be dismissed by this Court.

6. We are of the considered view that there is no infirmity in the impugned order and that an amount of Rs.8,13,90,521/- is the amount which has been mentioned in the proclamation of sale / terms and conditions on the date of sale as observed in the impugned order and that the property

was sold for Rs.3.51 Cores. We are of the view that the Petitioner has only been made to deposit the amount of Rs.3.51 Cores as condition to entertain the Appeal and that is not even 50% of the amount of Rs.8,13,90,520/-. We are of the considered view that no prejudice will be caused to the Petitioner in making the said deposit. We are also of the considered view that the Section 18 of the SARFAESI Act is a mandatory provision and that the Petitioner is obliged to comply with the impugned order passed by the DRAT and can make no grievance of the same.

7. We accordingly dismiss the Petition. There shall be no order as to costs.

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