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

WRIT PETITION (L) NO. 1928 OF 2017

1. M/s. Parekh Gold House Pvt. Ltd.
A Private Ltd Co,. Incorporated under the Companies Act, 1956 having its Registered Office at 29/A, Siddhipura Industrial Estate, Gaiwadi Road, Goregoan (West), Mumbai 400 062.

2. Shri Pravin C. Parekh,
An Adult, R/at Flat No. 602, Panchvati Apartment, Vile Parle (East), Mumbai 400 057.

3. Smt. Damyanti P. Parekh,
R/at. Flat No. 602, Panchvati Apartment, Vile Parle (East), Mumbai 400 057.

4. Shri Chamanlal V. Awtaney
R/at. A/ 402, Reveira Tower, Lokhandwala Township, Kandivali (East), Mumbai 400 101. **…Petitioners**

Versus

India SME Asset Reconstruction Co. Ltd.
Plot No.C-11, G Block, Bandra, Kurla Complex, Bandra (East), Mumbai 400 051.

…Respondent

Mr. R.D. Soni, with Mr. Chetan Yadav, i/b M/s. Ram & Company for the Petitioner.
Ms. Uma S. Fadia, for the Respondent No.1.

CORAM: B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATED: 21st July 2017

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

1. The Petitioner by the present Petition is challenging the order dated 7th July 2017 passed by the Debts Recovery Tribunal No.1,("**DRT- I**") by which DRT-I declined to pass any order on the proposal of the Petitioner for disposal of his residential flat personally to the buyer of his choice and has held that the question would arise after physical possession had been taken by the Respondent bank. It is further recorded that the Respondent bank had agreed to postpone all further action till 6th August 2017 and the matter was posted to 10th August 2017.

2. The Petitioner No.1 is a borrower of Axis Bank Ltd and Bank of India and had offered properties as and by way of security against the loan to the banks. Petitioner Nos. 2 to 4 are the guarantors. The bank thereafter assigned the loan to the Respondent. The Petitioners had failed to make payment of the dues of the banks. The banks prior to assigning their

debts in favour of Respondent, had filed complaint before the Chief Metropolitan Magistrate, Esplanade Court, Mumbai ("**CMM**") under Section 14 of the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI**" Act). An order came to be passed by the CMM directing the Assistant Registrar of the Borivali Centre of Courts to take possession of the secured properties. The Respondent after being assigned the bank debts filed an application before the CMM, Esplanade Court to be added as Applicant in place of the Assignors / banks. An order came to be passed by CMM on 16th January 2017 appointing an Advocate to take possession of the properties. The Petitioner submitted OTS of Rs.1442 lakhs towards full and final settlement of the dues. The Petitioners and Respondent thereafter deliberated on the OTS and ultimately the Respondent on 21st April 2017 extended its consent for OTS till 30th April 2017 and called upon the Petitioners to pay entire settlement amounts to the Respondent. Upon the Petitioners failure to do so, the Respondent by letter dated 2nd May 2017 cancelled the OTS. The Petitioner thereafter requested the Respondent to reconsider its decision and has sought NOC from the Respondent permitting the Petitioners to proposal for sale of the secured properties. The Petitioners have claimed that the Respondent by letter dated 7th June 2017 agreed to the Petitioners proposal for sale of the secured properties. The Advocate / Commissioner had by notice dated 30th June 2017 informed the Petitioners to handover possession of the properties by 10th July 2017 and 13th July 2017. The Petitioners filed Securitisation Application No. 93 of 2017 on 5th July 2017 for setting aside the measures initiated by Respondent under Section 13(4) of the SARFAESI Act. The Petitioners had filed an Affidavit dated 5th July 2017 in the DRT showing their willingness to give possession in respect of the properties. The Petitioners have also referred to the proposal of disposal of the residential flat (secured property) by the Petitioner personally to the buyer of their choice. The Presiding Officer, DRT – 1 has passed the impugned order dated 7th July 2017 rejecting the interim Application. The Petitioners have thereafter filed the present Petition challenging the impugned order and contending that the measures adopted by the Respondent in taking possession of the secured properties are contrary to the provisions of the SARFAESI Act.

3. Shri Soni learned Advocate for the Petitioners has submitted that the Petitioners are willing to settle the dues of the Respondent and that the Petitioners may be directed to dispose of the residential flat personally to a buyer of their choice and utilize the proceeds to meet the dues of the Respondents. Shri Soni has contended that the Petitioners had submitted their OTS to the Respondent and that the Respondent was to provide its concrete answer to the OTS. The Petitioners had found the buyer for the secured property and the Petitioners are willing to settle the dues of the Respondent at the earliest. Shri Soni has contended that the DRT-I had not passed any orders on the proposal of the Petitioners despite the Petitioners attempting to settle the dues of the Respondent and had held that the proposal could only be considered after the physical possession had been taken by the Respondent. Shri Soni has submitted that the Petitioners proposal ought to have been accepted by the DRT

– I and, therefore, the impugned order ought to be set aside with proper directions being issued by this Court.

4. Smt Uma Fadia, learned Advocate for the Respondent has vehemently opposed the Petition and submitted that the Petitioners have time and again brought up their OTS with the Respondent and had promised to settle the Respondent's dues, but till date failed to do so. Smt. Fadia has contended that the Respondent is not interested in considering the proposal of the Petitioners until physical possession of the secured property is handed over to the Respondent. Smt. Fadia has submitted that in any event the Respondent has agreed before the DRT to postpone all actions till 6th August 2017 and that the matter was to be heard by the DRT – I as recorded in the impugned order on 10th August 2017.

5. We are of the considered view that there is no infirmity in the impugned order. The Petitioners have an alternate remedy and which is already availed of in the DRT and their application has been posted on 10th August 2017 by the impugned order. We are not inclined to interfere with the DRT

proceedings. The impugned order has itself recorded that the proposal of the Petitioner for disposal of the residential flat / secured property will arise after physical possession is taken by the Respondent. There is also an order passed by the CMM operating against the Petitioners and directing the Advocate appointed as Commissioner to take possession of the secured properties.

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

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