

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2558 OF 2017

Aditya Logistics (I) Pvt.

Ltd and Ors.

....Petitioners

V/s.

IDBI Bank Ltd.

....Respondent

* * * * *

Mr. V.R.B. Krishna Murthy, petitioner in person.

Ms. Maneesha Patel, Advocate for the respondent.

CORAM :-

B.R.GAVAI &

SANDEEP K. SHINDE, JJ.

DATE :-

12TH OCTOBER, 2017.

P.C. :-

1. By way of the present petition, the petitioner has challenged two orders. The first is dated 21st August, 2017 vide which the petitioner has been directed to deposit 50% of the amounts as shown in the demand Notices issued under Section 13(2) of the Sarfesi Act after

deducting amount of Rs.1.41 crores within 6 weeks in two equal installments. The first installment is directed to be deposited prior to 11th September, 2017 and the second before 3rd October, 2017. The second order under challenge is dated 12th September, 2017 vide which the application filed by the present petitioner for restitution of the period came to be rejected.

2. When the matter was listed before the Division Bench of this Court consisting of Anoop V. Mohta & Smt. Bharti H. Dangre, JJ, this Court had granted interim protection. The petition has a chequered history. Incidentally, one of us i.e. B.R. Gavai, J had an occasion to consider the entire matter in Writ Petition No. 12780 of 2015. The Court had in the said proceedings allowed the petition of the respondent no.1 herein which was filed against the present petitioner.

3. When the matter was listed before this Court on 6th October, 2017 Dr. Abhinav Chandrachud had appeared for the petitioner. The Court had asked the Learned

Counsel as to whether the order passed by this Court dated 1st July, 2017 is annexed to the petition or not. The Learned Counsel stated that, he was not aware of the order passed by this Court and therefore sought time to go through the order passed by this Court. On the next date i.e. 9th October, 2017, the petitioner appeared in person and informed the Court that, Mr. Chandrachud has refused to appear in the matter and therefore he sought time either to engage the services of another Counsel or to seek permission to appear in person. Accordingly, we had granted him time till today.

4. We find that the present petition is liable to be dismissed on the short ground of suppression of material facts. The Division Bench of this Court, to which one of us (B.R. Gavai, J) was a party while deciding Writ Petition No. 12780 of 2015 decided on 1st July, 2017 has considered the entire history of the litigation between the present petitioner and the respondent, Bank. We had found that the Learned Tribunal had totally misconstrued

the earlier order passed by this Court and had passed an order which amounted to frustrating the mandate of Section 16 of the Sarfesi Act. WE had therefore set aside the order passed by the Learned Appellate Tribunal dated 4th November, 2015 vide which it had directed to consider the application filed by the present petitioner for complete waiver, at the stage of final hearing of the Appeal. The effect of such an order was to consider an Appeal of the petitioner without the petitioner being required to deposit any amount as required under Section 18 of the Sarfesi Act. In very strong words, we had deprecated the order passed by the Learned Debt Recovery Appellate Tribunal. We had also observed that the order passed by the Debt Recovery Appellate Tribunal was of such a nature that it shocks the judicial conscience of the Court.

5. It could thus be seen that the said order was a vital piece of material which ought to have been annexed by the petitioner alongwith the petition. However, there

is not even a whisper with regard to the said order in the said petition.

6. We have no hesitation in our mind that had the order dated 1st July, 2017 been placed alongwith the petition, the Court would not have passed the order dated 14th September, 2017. Incidentally, after the said order was passed, the assignment has changed and one of us who is a party to the said order dated 1st July, 2017 recollected that such an order is passed.

7. A party who comes to the Court by suppressing material facts is guilty of coming to the Court with unclean hands. Such a litigant is not entitled to the equitable jurisdiction of this Court under Article 226 of the Constitution of India. On this short ground, we are inclined to dismiss the petition.

7. We appreciate the gesture of Mr. Chandrachud in refusing to continue with the present petition after coming to know the order passed by this Court dated 1st July, 2017.

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12.10.2017

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)