

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2124 OF 2018

Ms. Kunal Kirana and Bhusar Wholesale
Merchant Through its Proprietor -
Ratanlal Pandit Phulpagare,
Age 54 years, Occupation Business,
R/o. 149, Anand Nagar, Bhoi Society
Deopur Dhule, Taluka and District Dhule. ... PETITIONER

VERSUS

1. Nagpur Nagrik Cooperative Bank Ltd.
Address at :- 79, Dr. Ambedkar Chowk,
Central Avenue, Nagpur 440008 (M.S.)
Through its Authorized Officer
2. The Circle Officer, Dhule,
Taluka and District Dhule ... RESPONDENTS

...

Mr. Nima R. Suryawanshi, Advocate for petitioner
Mr. K. C. Sant, Advocate for respondent No. 1

...
**CORAM : R. M. BORDE and
K.K. SONAWANE, JJ.**

DATED : 21st FEBRUARY, 2018.

JUDGMENT :- [Per : R.M. Borde, J.]

1. Rule. Rule made returnable forthwith. With consent of learned counsel for parties heard finally at the stage of admission.
2. The petitioner is objecting to the order passed by the Debt Recovery Tribunal, Aurangabad (for short "DRT") on 29-01-2018, rejecting the application tendered by petitioner for granting interim relief on the ground that the petitioner has failed to comply with order dated 07-08-2017 passed by DRT. The matter was listed before DRT on 07-08-2017 and while considering the application tendered by the petitioner, the DRT has directed the petitioner to deposit a sum of Rs.5,00,000/- by way of demand draft and to file affidavit in respect of

deposit of balance amount and also undertaking in respect of handing over the possession of the property to the defendant incase of default. It does appear that draft for an amount of Rs. 5,00,000/- has been handed over to the representative of the respondent-bank on 08-08-2017. It is further noted that affidavit within contemplation of the order has also been presented to the Court. It does appear that petitioner has complied with order dated 07-08-2017. It was not open for the DRT to revoke ad-interim relief on the ground that petitioner has failed to comply with order dated 07-08-2017. The rejection of the application for grant of interim relief, thus, appears to be without application of mind.

3. Learned counsel for respondent No. 1-bank states that there is remedy available in law for challenging the order passed by DRT, which is an interlocutory order. The learned counsel appearing for petitioner states that respondent-bank is making haste to take possession of the property and also conducting auction proceedings. Considering the fact, that petitioner has to challenge the order before the appellate forum and for the same, liberty deserves to be granted.

4. In this view of the matter, we grant liberty to the petitioner to raise challenge to the order passed by DRT on 29-01-2016 before the appellate forum. The petitioner shall take appropriate steps and raise challenge to the said order before the appellate forum within a period of two week from today. The order passed on 07-08-2017 passed by DRT shall remain operative for a period of eight weeks from today. Meanwhile, it would be open for the petitioner to secure appropriate interim relief from the appellate forum.

5. Rule is made absolute in above terms. The petition stands disposed of accordingly.

Sd/-

**[K. K. SONAWANE]
JUDGE**

Sd/-

**[R. M. BORDE]
JUDGE**