

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

WRIT PETITION NO. 10043 OF 2017

State Bank of India
a body corporate constituted under
the State Bank of India Act, 1955,
having one of its branch at Plot
No. P-7/2, MIDC Area, Jalgaon,
Through its Principal Officer .. Petitioner

Versus

1. Ruchi Amrish Lalwani (Jain)
Age : Adult, having her
Address at 43/2 Karve Road,
Nal Stop, Pune 411 004,
Maharashtra State, India.
2. M/s Rajmal Lakhichand and Sons
a Partnership Firm, having its
address at 169, Johari Bazar, Jalgaon
through its Partners,
 - (i) Manish Ishvarlal Lalwani (Jain)
 - (ii) Pushpadevi Ishvarlal Lalwani (Jain)
 - (iii) Neetika M. Lalwani (Jain)
3. Manish Ishvarlal Lalwani (Jain)
Age : Adult, having his
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
4. Pushpadevi Ishwarlal Lalwani (Jain)
Age : Adult, having her
Address at 169, Johari Bazar,

Jalgaon 425 001, Maharashtra State,
India.

5. Nitika Manish Lalwani (Jain),
Age : Adult, having her
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
6. M/s Manvi Holdings Pvt. Ltd.
a company incorporated under
the Companies Act, 1956 and having
its Address at 169,
Johari Bazar, Jalgaon 425 001,
Maharashtra State, India.
7. M/s Rajmal Lakhichand and Sons
a Partnership Firm, having its
address at 169, Johari Bazar, Jalgaon
through its Partners,
 - (i) Manish Ishvarlal Jain
 - (ii) Neetika M. Jain
 - (iii) Ishwarlal S. Jain

.. Respondents

**WITH
WRIT PETITION NO. 10044 OF 2017**

State Bank of India
a body corporate constituted under
the State Bank of India Act, 1955,
having one of its branch at Plot
No. P-7/2, MIDC Area, Jalgaon,
Through its Principal Officer

.. Petitioner

Versus

1. Ruchi Amrish Lalwani (Jain)

Age : Adult, having her
Address at 43/2 Karve Road,
Nal Stop, Pune 411 004,
Maharashtra State, India.

2. M/s R. L. Gold Pvt. Ltd.
a company incorporated under
the Companies Act, 1956 and
having its Registered office at 169,
Johari Bazar, Jalgaon 425 001,
Maharashtra State, India.
3. Manish Ishvarlal Lalwani (Jain)
Age : Adult, having his
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
4. Ishvarlal Shankarlal Lalwani (Jain)
Age : Adult, having his
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
5. Nitika Manish Lalwani (Jain)
Age : Adult, having her
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
6. Pushpadevi Ishwarlal Lalwani (Jain)
Age : Adult, having her
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
7. Amrish Ishwarlal Lalwani (Jain),
Age : Adult, having his

Address at 43/2 Karve Road,
Nal Stop, Pune 411 004,
Maharashtra State, India.

8. Chandanmal P. Jain
Age : Adult, having his
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
9. Master Arya Manish Lalwani (Jain)
Age : Adult, having his
Address at 169, Johari Bazar,
Jalgaon 425 001, Maharashtra State,
India.
10. Manalidevi U. Bothra,
Age : Adult, having her
Address at 169, Johari Bazar,
Jalgaon 425 001,
Maharashtra State, India.
11. M/s Rajmal Lakhichand and Sons
a Partnership Firm, having its
address at 169, Johari Bazar, Jalgaon
through its Partners,
 - (i) Manish Ishvarlal Jain
 - (ii) Neetika M. Jain and
 - (iii) Ishwarlal S. Jain
12. M/s Rajmal Lakhichand and Sons
a Partnership Firm, having its
address at 169, Johari Bazar, Jalgaon
through its Partners,
 - (i) Manish Ishvarlal Lalwani (Jain)
 - (ii) Pushpadevi Ishvarlal Lalwani (Jain) and

(iii) Neetika M. Lalwani (Jain)

13. M/s Manvi Holdings Pvt. Ltd.
a company incorporated under
the Companies Act, 1956 and having
its Address at 169, Johari Bazar,
Jalgaon 425 001,
Maharashtra State, India. .. Respondents

Shri S. V. Adwant, Advocate a/w Shri Gajendra A. Rajput and
Ms. Neha B. Kamble, Advocates for the Petitioner in both
matters.

Shri P. M. Shah, Senior Advocate i/by Shri S. R. Vakil, Advocate
for Respondent No. 1 in both matters.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

RESERVED FOR JUDGMENT ON : 13.02.2018
JUDGMENT PRONOUNCED ON : 23.02.2018

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. Heard finally with
the consent of learned counsel for respective parties at stage of
admission.

2. The present petitioner has filed original applications
against the respondents herein for recovery of the amount. The
petitioner also filed an application for interim orders (Exhibit
05). The Debt Recovery Tribunal, Aurangabad (for short
"Tribunal") passed following ad-interim order.

ORDER

- (1) Issue summons and notice of this O. A. and I. A. along with copies thereof and annexures to the defendants No. 1 to 7 for causing their appearance and also for filing their W.S. and Say to the O.A. and I.A. respectively within 30 days from the date of service on them.
- (2) The defendants No. 1 to 7 are hereby restrained till further Order from selling, alienating, transferring, encumbering, disposing of or creating third party interest in the hypothecated, charged and mortgaged properties of the respective defendants as described below :
 - (a) Hypothecated assets comprising of office furniture, A/c, testing machines, etc. present & in future, lying, being and situated at the business place and works of the defendant No. 1 including goods, stock-in-trade, stock under purchase & sale, plant & machinery, book debts, receivables & all other movables created out of the bank funds.
 - (b) Mortgaged property of the defendant No. 5 comprising of all that piece & parcel of the land Gut No. 56/1C, admeasuring 81R (2 Acres - Site of Wind Mill) situated at Chikale, Tq. & Dist. Nandurbar, and bounded as towards East : Remaining part of Gut No. 56, West : Gawothan, South : Forest Gut No. 59 and North : Remaining part of Gut No. 56.
 - (b) Mortgaged property of the defendant No. 5 comprising of all that piece & parcel of the land CTS No. 96, Old municipal Council No. 118, admeasuring 33.40 sq. mtrs, situated at Balaji Peth, Jalgaon along with building constructed thereon, and bounded as towards East : Road & utility, West : CTS No. 93A, South : CTS No. 98 TP Scheme-I, Plot No. 11 and North : CTS No. 93B.
 - (c) Mortgaged property of the defendant No. 5 comprising of all that piece & parcel of the House No. 3728(3), Swati Manor "C", constructed over F.P. No. 12, S. No. 235,

TPS-III, admeasuring 254.25 sq. mtrs, situated at N.C. Kelkar Road, Mahim Division, Mumbai, bearing Ward No. GN-3729.

- (d) Mortgaged property of the defendant No. 6 comprising of all that piece & parcel of the land hereditaments, premises, buildings standing thereon and situated at CTS No. 96, Old Municipal Council No. 118, Balaji Peth, Jalgaon, admeasuring 33.40 sq. mtrs, and bounded as towards East : Road & utility, West : CTS No. 93A, South : CTS No. 98 TP Scheme-I, Plot No. 33 and North : CTS No. 93B.
- (3) The defendants No. 1 to 7 are directed to close their accounts with all other Banks and the applicant bank shall allow the defendants to open a separate current account with the applicant bank to route their transactions through the said current account to be opened with the applicant bank forthwith.
- (4) After opening the current account with the applicant bank, the defendants shall bring entire credit balance with all other Banks in the said current account to be opened by the defendants with the applicant bank. The applicant bank shall allow the defendants to withdraw the amounts as per requirement of the business of the defendants from the said current account to be opened by the defendants with the applicant bank.
- (5) The defendants are directed not to leave the country without prior permission of this Tribunal.
- (6) The defendants are directed to disclose the list of book debts which they have to recover from their clients and business debtors.
- (7) The defendants are also directed to disclose the amount exchanged interese between the defendants, which are the Companies and the partnership firm floated by all of them supported by their balance sheets.
- (8) The defendants are also directed to disclose

on affidavit their assets created out of the bank finance and their transactions.

- (9) Shri Parikshit K. Bhadade of M/s Bhadade Lahoti & Co. Professionals, 18, Hareshwar Nagar, Near Mahesh Pragati Mandal, Ring Road, Jalgaon (Phone No. 0257-2239331), is hereby appointed as Court Commissioner to take inspection and inventory of the plant & machinery and other fixtures and goods lying in the godown of the defendant-borrower and to submit the report thereof within 15 days from today.
- (10) The applicant bank shall pay Rs. 50,000/- to the said Court Commissioner towards the fees of the said commission work
- (11) List the matter on 28.06.2016.

3. The respondent No. 1 herein Ruchi Amrish Lalwani (Jain) is the defendant No. 7 in original applications. The respondent No. 1/defendant No. 7 filed appeals against the ad-interim ex-parte order before the Debt Recovery Appellate Tribunal, Mumbai (for short "DRAT"). The DRAT allowed the appeals filed by the respondent No. 1/defendant No. 7 and set aside the ad-interim ex-parte orders passed by the Presiding Officer, Debt Recovery Tribunal, Aurangabad (for short "DRT"). Aggrieved thereby the original applicant/bank has filed present writ petitions.

4. Mr. Adwant, the learned advocate for the petitioner strenuously contends that, the DRAT, Mumbai has failed to consider Sub Sections 13-A and 18 of Sec. 19 of the Recovery of Debts and Bankruptcy Act, 1993 (for short "Act of 1993"). The

Presiding Officer, DRT has got wide powers to pass ex-parte ad-interim order in the interest of justice. Sub. Sec. 25 of Sec. 19 of the Act of 1993 gives wide powers to the Tribunal to give such directions as may be necessary or expedient to prevent abuse of process or to secure the ends of justice. Sub Sec. 12, 13 and 13-A of Sec. 19 of the Act of 1993 empowers the Tribunal to pass ex-parte ad-interim orders in the nature of attachment, appointment of receiver and such other orders to meet the ends of justice. The defendants have defalcated huge loan amounts. The respondent No. 1 instead of obeying the orders passed, filed an appeal before the Appellate Tribunal. The DRAT while allowing appeals filed by the defendant No. 7/respondent No. 1 has erroneously observed that, the Courts have to follow the principles of natural justice and give an opportunity to the opposite party before passing any order against such party and on the ground that no such opportunity was given, has set aside the order and allowed appeals to the extent of the defendant No. 7. The said observations are against the provisions of the Statute. The case of the petitioner bank is not at all considered and only relying upon the letter dated 18.03.2014 has observed that, bank has stated that, the appellant therein that is the respondent No. 1 is not a guarantor or the principal borrower and that granting any interim order against the appellant is not permissible. The explanation of the bank is not considered. The learned counsel further submits that, the advocate for the petitioner on the date of hearing could not remain present due to

unavoidable circumstances, as such the order is passed in absence of the advocate for the petitioner and the case put forth by the petitioner herein was not considered.

5. Mr. P. M. Shah, the learned senior advocate for the respondent No. 1 submits that, the letter of the bank dated 18.03.2014 clearly establishes that the defendant No. 7 is not a guarantor. After 2009 not a single document is signed by the defendant No. 7 in whatsoever capacity. Passing ad-interim ex-parte order in such matter was totally unwarranted. The Appellate Tribunal has rightly observed the effect of the letter dated 18.03.2014 issued by the bank. Even otherwise, now the matters are kept for hearing. Almost for more than eight months, the ex-parte ad-interim order against the present respondent No. 1 is not in force.

6. With the assistance of learned advocate, we have gone through the judgment and order delivered by the D.R.A.T., Mumbai and the ex-parte order passed by the Presiding Officer, D. R. T. Aurangabad.

7. It appears that, the respondent No. 1/defendant No. 7 is sued in the capacity of a guarantor.

8. Upon presentation of original applications and Exhibit 05, the Presiding Officer, D.R.T. Aurangabad has passed ex-parte ad-

interim order. The defendant No. 7 had every right to appear before the D.R.T. Aurangabad, file her say to Exhibit 05 and contest the application Exhibit 05 for interim orders. However, without resorting to the same, the defendant No. 7 preferred to file appeals against the ex-parte ad-interim order before the D.R.A.T. Mumbai.

9. The D.R.A.T. Mumbai in the impugned order has observed that, the Courts have to follow the principles of natural justice of giving an opportunity to the opposite party before passing any order against any such party.

10. We would hasten to observe that, the Presiding Officer, D.R.T. while entertaining original application and application for interim order has got ample power to pass ex-parte ad-interim orders. There are no fetters on the width and amplitude of the powers of the Presiding Officer in passing ex-parte ad-interim order, considering exigency and the circumstances in the particular matter. Sub Section 13-A of Sec. 19 of the Act of 1993 gives power to the D.R.T. to issue show cause notice to the defendants why he should not furnish security considering the contingency enumerated in Sub Sec. 13-A of Sec. 19 of the Act of 1993. Sub Section 18 of Sec. 19 of the Act of 1993 gives power to the Tribunal to appoint receiver of any property, so also appoint Commissioner for preparation of inventory of the properties of the defendant or for the sell thereof at any stage of the

proceedings. The legislature may not foresee or visualise each and every eventuality during the course of the proceedings, in view of that Sub Section 25 of Sec. 19 of the Act of 1993 has been enacted and it gives powers to the Tribunal to make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. The Tribunal is vested with enormous powers to pass ex-parte ad-interim order so as to secure the ends of justice. Considering the merits and facts of the matter, if, the Presiding Officer feels it expedient in the interest of justice and to secure the ends of justice, he has the power, authority and jurisdiction to pass ex-parte ad-interim orders.

11. It appears that, the counsel for the petitioner/bank could not remain present on the date of hearing before the D.R.A.T. Mumbai and without considering the explanation of the bank and/or the case put forth by the bank, the Appellate Tribunal passed an order setting aside ad-interim ex-parte orders. The defendant No. 7 was concerned with clauses 3 to 8 of the operative order.

12. Considering that the ex-parte ad-interim orders are set aside by the Appellate Tribunal without hearing arguments of the advocate for the bank, we direct that the Exhibit 05 applications shall be decided by the Presiding Officer, Debt Recovery Tribunal, Aurangabad on its own merits after hearing

the arguments of respective parties to the extent of petitioner and the respondent No. 1/defendant No. 7. The respondent No. 1/defendant No. 7 shall in the mean time disclose on affidavit her assets as was directed in the ad-interim order.

13. With these observations, we relegate the parties before the Debt Recovery Tribunal, Aurangabad for deciding Exhibit 05 application on its own merits upon hearing the petitioner/bank and the respondent No. 1/defendant No. 7. The orders of the Appellate Court has only set aside the ex-parte ad-interim order meaning thereby that the Exhibit 05 applications are still open to be heard.

14. In the light of the above, rule is made absolute in above terms. No costs.

Sd/-

[A. M. DHAVAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]