IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2386 OF 2018
…

Panache Aluminium Extrusion
Pvt.Ltd. & Ors. ...Petitioners

v/s.

Dena Bank & ors. ...Respondents
…

Mr.D.A.Madon, Sr.Advocate i/b Dalal & Co. for the Petitioners.
Mr.Rajesh Nagori i/b Ram I. Ramrakhiani for the Respondent No.1.
…

CORAM : A.A. SAYED &
V.L.ACHLIYA, JJ.
DATED : 24 FEBRUARY 2018

P.C.:

Heard learned Senior Counsel for the Petitioners and learned Counsel for the Respondent-Bank.

2. By this Petition filed under Articles 226 & 227 of the Constitution, the Petitioners have challenged the order dated 18 December 2017 order was passed by the Addl.Chief Metropolitan Magistrate appointing a Court Commissioner to take over physical possession of the secured assets viz.(I) flat No.92, 22nd Floor, Matru Mandir CHSL., Plot No.278, Survey No.654, Tardeo road, Opp. Bhatia Hospital, Mumbai-07, (II) flat No.73, 18th Floor,

Matru Mandir CHSL., Plot No.278, Survey No.654, Tardeo road, Opp. Bhatia Hospital, Mumbai-07, (III) Flat No.65, 16th Floor, Matru Mandir CHSL., Plot No.278, Survey No.654, Tardeo road, Opp. Bhatia Hospital, Mumbai-07, on an Application filed by the Respondent-Bank under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI' Act for short). The Petitioners have also challenged the consequent notice issued by the Court Commissioner to take possession of the secured assets on 26 February 2018. Learned Senior Counsel for the Petitioners has pointed out the judgment of the Supreme Court in the case of **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai & ors.**, (1998) 8 SCC 1, and in particular paragraph 15 thereof, which reads as follows:

> "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we

> would rely on some old decision of the evolutionary era of the constitutional law as they still hold the field.”

3. Relying upon the aforequoted observations of the Apex Court, the learned Senior Counsel submitted that though the Petitioners have a remedy before the DRT, this Court can entertain the Writ Petition as the impugned order passed by Addl. CMM is without jurisdiction. He invited our attention to section 14 of the SARFAESI Act and in particular the second proviso thereto, which reads as follows:

> “Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.”

According to the learned Senior Counsel for the Petitioners, since the Addl.Chief Metropolitan Magistrate has passed the impugned order after a period of sixty days from the date of the Application he had ceased to have jurisdiction and the impugned order is therefore without jurisdiction. Learned Senior Counsel therefore submits that the Writ Petition ought to be entertained by this Court and urged that the impugned order is required to be set aside.

4. We are unable to agree with the contention of the learned Senior Counsel for the Petitioner. Merely because the impugned order has been passed beyond sixty days would not mean that the Addl.Chief Metropolitan Magistrate ceased to have jurisdiction or did not have jurisdiction to pass the impugned order. The Supreme Court in the aforequoted judgment has made clear that the Court may entertain a Writ Petition where the order is `wholly' without jurisdiction. Section 14 of the SARFAESI Act was amended and the upper limit of sixty days was provided essentially for the benefit of the Banks and the Financial Institutions, as many a times the Applications remained pending before the CMM and District Magistrate for months together. The Petitioners who, according to the Respondent-Bank, have an outstanding liability amount of about Rs.29 crores as of today, cannot be permitted to take benefit of the aforequoted proviso to section 14 of SARFAESI Act to contend that the impugned order is passed without jurisdiction.

5. We find that similar provision appears in section 17 wherein it is provided that the Application under section 17 is required to be disposed of within 60 days and in any case not exceeding four months. We have hardly come across Securitisation Applications which have been disposed of finally within four months. One cannot be unmindful of the huge pendency of cases in the DRT, Mumbai. If the contention of the learned Senior Counsel

were to be accepted the SARFAESI Act may itself become redundant for persons seeking reliefs against the Banks and Financial Institutions, if their Securitization Applications are not decided within four months.

6. In the circumstances, since the Petitioners have an alternate remedy before the DRT, we are not inclined to entertain the Writ Petition. The Petition shall accordingly stand dismissed in limine.

7. The learned Senior Counsel for the Petitioners urges that the taking over possession of the secured assets be deferred for a period of two weeks. The learned Counsel for the Respondent-Bank opposed the request. When we asked the learned Senior Counsel whether the Petitioners are agreeable to pay 50% of the outstanding amount, we are candidly informed that the Petitioners are not in a position to pay anything. As pointed out by the learned Counsel for the Respondent-Bank as of today the outstanding amount payable by the Petitioner is about Rs.29 crores. In the facts and circumstances of the case, we are not inclined to grant stay. The request shall stand rejected. We however make it clear that the DRT shall be free to pass appropriate orders as it deems fit without being influenced by this order.

(V.L.ACHLIYA,J.) **(A.A.SAYED, J.)**