IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4333 OF 2018

M/s. Ishwar Textile through its Proprietor & Ors. … Petitioners
V/s.
Tamilnad Mercantile Bank Ltd. & Anr. … Respondents

Mr. Nitin Thakkar, Senior Counsel a/w Mr. Inderpal Singh Nirmale for the Petitioners.
Ms. Usha K. Srivastava i/b Consulta Juris for Respondent No.1.
Ms. Jyoti P. Jadhav, A.G.P. for the State.

CORAM : A.A. SAYED AND
RAVINDRA V. GHUGE, JJ.

DATE : 18th APRIL, 2018.

P.C. :

1 The Petition essentially impugns the order dated 16.02.2018 of DRT which reads as follows :

" The matters are listed on today's board. No replies are filed by the respondent bank to the Interim Applications (I.As) due to paucity of time. Heard both sides in the above I.A. and perused the record.

2 The above I.As are filed by the applicants for grant of stay restraining the respondent bank from taking physical possession of the secured assets scheduled tomorrow. Disregarding the merits of the matter, the applicants today filed affidavits undertaking to deposit Rs.One Crore in two installments i.e. Rs.80 lacs on or before 22.02.2018 and remaining Rs.20 lacs within two weeks from today. The applicants further agreed that if they fail to dispose off the *secured assets within five weeks from today, they will handover physical possession immediately after expiry of five weeks from today. The said proposal was also accepted by respondent bank. Till then, the respondent bank shall not dispossess the applicants. Accordingly, all the Interim Applications mentioned above are hereby disposed off. "*

2 The Petitioners thereafter move the DRT seeking clarification of the order dated 16.02.2018 of DRT and an order dated 27.03.2018 came to be passed which reads as follows:

"Resumed,
Ms. Sanjana Ghogare, Adv. for the applicants is present.
Ms. Srivastava, i/b. M/s. Consulta Juris, Adv. for the respondent is present.
The order dt. 16.02.2018 passed by this Tribunal is very clear and unambiguous and does not require any clarification.
The matter is posted to 12th July 2018 for filing reply by respondent."

The above order dated 27.03.2018 is also impugned in the Petition.

3 The learned Senior Counsel for the Petitioners has pointed out that in the impugned order dated 16.02.2018, there is a reference of an Affidavit dated 16.02.2018. Copy of the said Affidavit dated 16.02.2018 which is placed on record reads as follows :

"I, Mr. Pawan Kumar Malpani, an Indian inhabitant and being the Applicant in the matter do hereby state on solemn affirmation as under :

1. *I say that I have been banking with the bank for the last 30 years and have at no times faced any difficulty. But on account of the economic scenario, things have worsened and I therefore approached the Respondent bank on various occasions recently for settlement.*

2. *I say that the bank is claiming the three joint flats as its securities. It is an admitted fact that these are the only properties with the bank. I have therefore been parallely trying to find and have found a ready buyer for the said residential properties at Andheri which are the subject matter of the present application.*

3. *The buyer is also willing to let us continue for some time till we are able to arrange our alternate accommodation. There are 5 families of the Applicants are residing in the said flats. Total 13 members are staying therein. One of them is special child and my mother of 80 years of age.*

4. *The said buyer is willing to offer an amount of Rs.7 crores for the said properties. To show his bonafide, the said buyer is willing to deposit an amount of Rs.80 lakhs towards EMD. The balance said sale amount will be deposited within 4 weeks ensuring that the Respondent bank recovers its dues before 31st March 2018. During the said period the Applicants can use, occupy and possess the said residence.*

5. *I further state that in case the Respondent bank is able to get a better offer for the said properties as sought by them, the Applicants agree to vacate the said properties immediately upon such sale. The said amount deposited towards EMD can be retained by the Bank till the said properties are vacated by the Applicants.*

> 6. *I say that it is therefore fit and proper in the facts and circumstances of the case that this Hon'ble Tribunal be pleased to consider the said offer and grant appropriate reliefs."*

4 Though the Petitioners have an alternate remedy for filing an Appeal before DRAT, we entertained the Petition inasmuch as it was represented to us that the parties are negotiating and the matter is likely to be settled.

5 The matter was adjourned from time to time i.e. 13.04.2018, 16.04.2018 and 17.04.2018 and the matter is now listed today. The Court has spent some time and effort to bring about a settlement. Yesterday, when the matter was called out, it was ultimately agreed before the Court that the Petitioners shall pay total sum of Rs.8 crores instead of Rs.7 crores offered by the Petitioners earlier. Learned Counsel for the Respondent Bank however stated that there was some reservation to the Purchaser paying the amount to the Respondent Bank rather than the Borrower. We, therefore, found that this is only a question of procedure which can be worked out and hence kept the matter back to enable the parties to work out the modalities. However, in a sudden turnaround, the learned Counsel for the Respondent Bank informed us that Officers of the Respondent Bank are no more interested in the settlement. We are not pleased with the conduct of the

Officers. We may also note here that Respondent Bank in terms of the order dated 16.02.2018, have already accepted two cheques of Rs.80 lakh and Rs.20 lakh aggregating to Rs.1 Crore from the Purchaser namely M/s. Safeline Realtors Advisory Pvt. Ltd.

6 In the circumstances, we find that the Petitioners are now agreeable to pay the amount of Rs.8 crores and the Petitioners are only seeking extension of time for the amount to be paid by them and/or the Purchaser M/s. Safeline Realtors Advisory Pvt. Ltd.

7 In the Undertaking of the Petitioners as well as the Purchaser filed today, the Petitioners/Purchaser have given the schedule of payment as follows :

> *"2. The Purchasers and the Petitioners undertake to this Hon'ble Court to pay the sum of Rs.8 Crores in the manner following :-*
>
> a) A sum of Rs.1,00,00,000/- (Rupees One Crore Only) already deposited by the Purchaser with the Respondent as per the Order of DRT-1 (PO) dated 16th February, 2018.
>
> b) Rs.2,00,00,000/- (Rupees Two crore only) on or before 27th April, 2018 to be paid by the Purchaser.
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> c) Rs.4,00,00,000/- (Rupees Four crore only) on or before 18th May, 2018 to be paid by the Purchaser.

d) Rs.1,00,00,000/- (Rupees One crore only) on or before 31st July, 2018 to be paid by the Petitioners."

8 In deference to the suggestion of the Court, the Undertaking also provides in Paragraph 5 as follows :

> *" In the event of the Purchasers or the Petitioners committing any default in payments of the amount as per clause 2 (b) above or clause 2 (c) and (d) above, the Respondent No.1 Bank shall be entitled to proceed further under SARFAESI Act, 2002 in respect of the flats mentioned above and forfeit the sum of Rs.1,00,00,000/- (Rupees One Crore) deposited in the Respondent No.1 Bank."*

9 In the circumstances, we dispose of the Petition in terms of the Undertaking of the Petitioners and the Purchaser, which we accept. In view of the Undertaking the Respondent Bank shall not proceed to take further steps unless there is a default and non-compliance of the Undertaking. We make it clear that the Securitisation Application Nos.92, 93, 94 and 95 of 2018 shall now stand disposed of by virtue of the present order.

10 All the concerned to act on authenticated copy of this order.

(RAVINDRA V. GHUGE, J.) **(A.A. SAYED, J.)**