

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10121 OF 2018**

M/s. Oza Brothers Agro Foods Pvt. Ltd. ... Petitioners

Vs

State Bank of India and Ors. ... Respondents

...

Mr. Sangharsh Waghmare for the Petitioner.

Mr. R.J.Singh I/by M/s. R.J.Singh and Co. for the Respondents.

**CORAM : K. K. TATED &**

**SANDEEP K. SHINDE JJ.**

**DATE : 26 SEPTEMBER, 2018**

**P.C. :**

Heard learned counsel for Parties.

2 By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the order dated 4.9.2018 passed by the DRAT at Mumbai in M.A.No.536 of 2018 in Appeal No.47 of 2018 directing the Petitioner to pay a sum of Rs.2,40,61,109/- as per Section 18 proviso 2 of the SARFAESI Act.

3 It is to be noted that the present Writ Petition is filed by the Petitioner before this Court on 5.9.2018. This Court on 6.9.2018 had on request of the advocate for the petitioner circulated the

matter for ad-interim relief on 7.9.2018. The matter was on board on 7.9.2018, at that time, advocate Mr. Waghmare appeared on behalf of the Petitioners and submitted that Petitioners are ready and willing to accept the proposal from the Respondent-Bank dated 30.8.2018 and ready to make payment. In view of the settlement, matter was adjourned to 12.9.2018. On 12.9.2018 advocate for the Petitioner submitted that he requires sometime to file Consent Terms to settle entire dispute between the parties. Hence, at his request, matter was adjourned for filing Consent Terms to 18.9.2018. On 18<sup>th</sup> September, advocate for the Respondent No.1 submitted that he already forwarded draft of the Consent Terms to the Bank for approval. Hence, matter was adjourned to 21.9.2018 for filing Consent Terms. On 21.9.2018 advocate for the Petitioner stated that matter is settled out of the Court. On that date, he made a statement before this Court that on Monday, i.e., on 24.9.2018 all the Petitioners would remain present before this Court for filing Consent Terms. Accepting statement made by the learned counsel for the Petitioner, matter was posted to 24.9.2018. On 24.9.2018 again at

the request of the advocate for the Petitioner, matter was posted to today's board, i.e., 26.9.2018 for filing Consent Terms.

4           Today, the learned counsel Mr. Waghmare appearing on behalf of the Petitioners submits that he receives instructions from his clients that they require sometime to clear Respondent-Bank's dues and to that effect, he had sent letter dated 24.9.2018 to the Chief Manager , State Bank of Hyderabad Branch at Nashik. The said letter is taken on record and marked X for Identification. This itself disclosed that the Petitioner on one or the other ground is postponing to hand over vacant and peaceful possession of the secured asset to the Respondent-Bank.

5           In the present proceedings, initially Petitioner filed Securitisation Application No.114 of 2018 before the DRT. In that Tribunal has passed order on 26.6.2018 recording Petitioner's undertaking that they will hand over possession of the secured asset to the Respondent-Bank. That order was challenged by the Respondent-Bank before this Court by filing Writ Petition (L) No.2174 of 2018. Matter was on board before this Court (Coram:

A.A.Sayed & V.L.Achliya, JJ ) on 28.6.2018. At that time, the Petitioners made statement before this Court that Undertaking given before the DRT would be abided. Hence, the Bank withdrawn the said Writ Petition.

The said order reads thus:

*"IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO. 2174 OF 2018*

*State Bank of India* *...Petitioner  
(Org. Respondent)*

*vs.*

*M/s. Oza Brothers Agro Foods Pvt. Ltd. & ors.*  
*...Respondents  
(Org. Applicants)*

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*Mr. Madhur Rai i/b. M.S.R.J. Singh & Co. for the  
petitioner.*

*Mr. Sanjay P. Oza for the respondents.*

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*CORAM : A.A. SAYED &  
V.L. ACHLIYA, JJ.  
DATE :JUNE 28, 2018*

*P.C.:*

*At the request of learned Counsel for the  
petitioner, the petition is allowed to be withdrawn  
and disposed of as such.*

*2. Respondent No.5 is present in the Court. He  
states that Undertaking given before DRT would be  
abided.*

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

*(A.A. SAYED, J.)"*

6                   Undertaking dated 26.6.2018 given by the Petitioner before the DRT reads thus:

*“1. We say that the Applicants undertake to this Hon'ble Tribunal to hand over vacant and peaceful possession of Flat No.10, 2<sup>nd</sup> Floor, Urvashi Apt., Building No.5, Near Sai Baba Mandir, Nashik Pune Highway Nashik to the Respondent Bank on or before 6<sup>th</sup> July, 2018.*

*2 We say that the Applicants undertake to this Hon'ble Tribunal to hand over vacant and peaceful possession of Bungalow situated at Plot No.17, S.NO.31/2/1, Near Samaj Mandir, Behind Taran Talao, Jagtap Mala, Deolali Shivar, Nashik on 6<sup>th</sup> July, 2018.*

*3 We say that the Applicants undertake to this Hon'ble Tribunal to hand over vacant and peaceful possession of Flat No.11, 2<sup>nd</sup> Floor, Jai Gopal CHSL. Beside Jawahar Market, Near Nashik Road Railway Station Nashik to the Respondent bank on or before 5<sup>th</sup> August, 2018.”*

7                   Instead of complying the undertaking given before the DRT, the Petitioner preferred M.A.No.536 of 2018 in Appeal No.47 of 2018 before the DRAT. In that appeal, Tribunal passed the impugned order and the same is challenged by the Petitioners before this Court.

8                   Considering the conduct of the Petitioners to postpone the matter on one or the other ground, we are of the opinion that the Petitioner has not made out any case before this Court for any reliefs.

Apart from that, Appellate Tribunal, DRAT recorded in paragraph 6 that advocate for the Petitioner requested 45 days to deposit 50% amount of the notice. Same was not deposited. Paragraphs 6 and 7 of the order dated 4.9.2018 reads thus:

*“6 Advocate for Appellants represented that some reasonable time is required to make the deposit. He submitted that atleast 45 days' time is required for depositing 50% of the notice amount.*

*7 Fifty per cent of Rs.4,81,22,218/- comes to Rs.2,40,61,109/-. The Appellants have to deposit this amount to entertain Appeal. Considering the submissions of advocate for Appellants this amount shall be deposited in two equal installments within 45 days for entertaining their Appeal. First installment of Rs.1,20,30,554/- has to be deposited within one month i.e. on or before 03.10.2018 and remaining amount of Rs.1,20,30,554/- has to be deposited on or before 22.10.2018 and failure to deposit any single installment would result in automatic dismissal of Appeal.”*

9 The fact that DRAT passed the order dated 4.9.2018 by consent of the advocate for the Petitioner and in spite of that they challenged this order Before this Court.

10 In view of these facts, we do not find any substance in Writ Petition.

(a) Petition stands dismissed with cost of Rs.25,000/-.

(b) Cost to be paid to the Respondent-Bank within four weeks from

today failing which the Respondent-Bank is entitled to recover the same.

(c) In view of dismissal of this Writ Petition, liberty granted to the Respondent-Bank to move before the concerned authority to take possession of the secured asset.

(d) The concerned authority is directed to comply the order dated 27.7.2017 passed by the learned District Magistrate, Nashik in Securitisation Case No.165 of 2016 as early as possible.

(SANDEEP K. SHINDE, J.)

(K. K. TATED, J.)

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