

Rane

1/11 WP-1495-2018 (SR.907)

Friday, 7.9.2018

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O.O.C.J.**

**WRIT PETITION NO. 1495 OF 2018**

Shilpa Goldie Sud and anr. ....Petitioners

V/s.

Bank of Maharashtra & Ors. ....Respondents

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Mr. Sagar Ghogra a/w. Ms. Sheetal Raghani I/by. J. Law Associates, Advocate for the petitioner/applicant in NMWL-558-2018.

Ms. Hema Desai a/w. Mr. Durgaprasad Halwai I/by. M/s. Singhi & Co./, Advocate for respondents no.1 and 7.

Mr. R.A. Shah a/w. Mr. Vyas I/by. M/s. Mansukhlal Hiralal & Co., Advocate for respondents no.2 to 6.

Mr. A.S. Pal I/by. M/s. Nayak Gopalkrishna Madhav, Advocate for respondents no.9 to 12.

Mr. Goldie Sud, respondent no.16 in person present in Court.

Mr. L.T. Satelkar, AGP for respondent no.17.

**Coram : K.K. Tated &**

**Sandeep K. Shinde, JJ.**

**Friday, 7<sup>th</sup> September, 2018.**

**P.C. :**

1. Heard Learned Counsel for the parties.
2. This petition is a best example of misuse of law in the presence of petitioners.
3. By this petition, under Articles 226, 227, 14 and 300 of the Constitution of India, the petitioners are challenging the roznama dated 28<sup>th</sup> February, 2018 of the Debt Recovery Tribunal, Mumbai in T.O.A. No. 478 of 2016 and the order dated 18<sup>th</sup> March, 2014 passed by the Learned Debt Recovery Tribunal-III (DRT) in O.A. No. 447 of 2010 alongwith the consent terms dated 15<sup>th</sup> March, 2014. The petitioner made the following prayers in the present writ petition :

*“(a) This Hon’ble Tribunal may kindly be pleased to set aside or cancel or recall the Roznama Order dated 28.02.2018 passed by Ld. DRT, Mumbai P.O.1 in TOA no. 478 of 2016;*

*(aa) Set aside or recall the Order dated 18.03.2014 passed by the Ld. Debt Recovery Tribunal III in Original Application No. 447 of 2010, alongwith consent terms dated 15.03.2014 therein;*

*(aaa) Set aside or recall the Order dated 18.03.2014 passed by the Ld. Debt Recovery Tribunal III in Secrutization Application No. 258 of 2013, alongwith consent terms dated 15.03.2014 therein;*

*(b)Direct the respondents jointly and/or severally to return the Title Deed dated 2/3.1988 in respect of the property bearing C.S. Nos.C9, C10 and C11 and N.A. 163 of Town Planning Scheme III, Bandra (West), at 133 Hill Road, Bandra (West), Mumbai-400 050 to the Appellant and/or to the Respondent no.16 herein;*

*(bb) or alternatively, direct the Respondents*

*jointly and/or severally to deposit the aforesaid Title Deeds with the Registry of this Hon'ble Court;*

*(c) Recall order dated 21.02.2014 passed by the Ld. P.O. of DRT-III in Securitization Application No. 258 of 2013 and Original Application No. 447 of 2010 and further be pleased to direct the Respondent Nos.1 to 6 and 13 to 15 jointly or severally to hand over the said title deeds to the Appellant no.1 and respondent no.16.*

*(d) Recovery Officer may kindly to be appointed in respect of the said entire property, its management and securing the rents, License fees and income, etc.*

*(dd) Pursuant to grant of prayer clause (d) above, the Recovery Officer be directed to deposit Rents and other income of DRT-1 or this Hon'ble Court with the Registrar from 18.03.2014;*

*(e) The Respondent Nos.1 to 6 and 13 to 15 or through their Authorised Personnel, Servants, Officers, Directors or any other Person/Entity acting through them be restrained from dealing with or alienating or creating any third party rights of whatsoever nature in respect of the Secured Asset / the said entire Property;*

*(f) Direct the Recovery Officer of DRT-I to conduct Auction Sale of Secured Assets as described in prayer (b) hereabove as per law to recover the pending amounts of claim of Respondent Bank of Maharashtra.*

*(g) Ad interim and interim reliefs in term of prayers of Interim Reliefs may kindly be granted;*

*(h) For such further and other reliefs as the nature and circumstances of the case may require;*

*(i) For cost of the Appeal be provided.”*

4. Earlier, the petitioner was appearing in person and thereafter they engaged the present Advocate.

5. It is to be noted that, the Learned Debt Recovery Appellate Tribunal in its roznama dated 20<sup>th</sup> February, 2018 observed that, defendant no.2's (the present petitioner) right to file written statement is already forfeited. The said roznama reads thus :

*“The Counsel appearing for the Applicant is present. Service Affidavit (Ex.69) is filed by the Applicant. Notice sent to defendant No.1 is returned with an endorsement “Item delivery attempted”. Issue notice to Defendant no.1 through speed post. Defendant no.2’s right to file written statement is already forfeited.*

*Matter is placed on 14.5.2018 for filing service affidavit of defendant No.1.*

*Service affidavit is filed by the Applicant.”*

6. This roznama records the order passed by the DRT earlier forfeiting the petitioner's right to file written statement. Therefore, there is no question of challenging this aspect. Hence, the petition is required to be dismissed on this ground alone.

7. The second order challenged by the petitioner by this Writ Petition is dated 18<sup>th</sup> March, 2014 passed by the Presiding Officer, DRT-III, Mumbai in O.A. No. 447 of 2010 below Exhibit-1. By that order, the DRT has taken on record, the consent terms (Exhibit-58) filed by the Bank and original defendants no.4 to 7 and disposed off the O.A. No. 447 of 2010. The Learned Judge of DRT-III, by order dated 18<sup>th</sup> March, 2014 made it clear that O.A. No. 447 of 2010 to remain pending for hearing against defendants no.1 and 2 i.e. petitioners in the present case. That order was

challenged by the petitioners before the DRAT by preferring Miscellaneous Appeal (Lodg) No. 448 of 2017, as stated in para-6.8 on page no.28 of the petition. Though the Miscellaneous Appeal is pending before the DRAT, the petitioner challenged the said order before this Court again. Apart from that, earlier the petitioner's filed Writ Petition No. 418 of 2016 alongwith Notice of Motion (Lodg) No. 248 of 2014 before this Court. That Writ Petition and Notice of Motion was rejected by relegating the petitioners to the ordinary remedy available to them in law. Para-1 of the said order reads thus :

*“1] The Petitioners have an alternate efficacious remedy of filing an Appeal before the Learned DRAT. In that view of the matter, we are not inclined to entertain the petition. The petition is therefore rejected by relegating the petitioners to the ordinary remedy available to them in law.”*

. In spite of these facts, the petitioner's once again by this

writ petition, challenged the order dated 18<sup>th</sup> March, 2014 passed by the DRT-III in O.A. No. 447 of 2010. On this ground alone, writ petition is required to be dismissed.

8. Mr. Ghogra, the Learned Counsel appearing on behalf of the petitioners submits that, Miscellaneous Application No. 448 of 2017 filed by them before the DRAT, the same is pending, though, they made application for early hearing. It is to be noted that, there are no specific averments to that effect made by the petitioners in the present petition nor placed on record any documentary proof to show that they made any application before the DRAT for early hearing and/or any ad-interim or interim reliefs. Therefore, the submission made by the Learned Counsel for the petitioner to set aside the roznama dated 28<sup>th</sup> February, 2018 and order dated 8<sup>th</sup> March, 2014 is not acceptable at all.

9. In view of these facts, as the petitioner is filing repeated applications/writ petitions challenging the same orders, though alternate efficacious remedy is available to them, the present Writ Petition is required to be dismissed with costs.

10. In the present proceedings, Ms. Hema Desai is appearing for respondents no.1 and 7, Mr. Shah is appearing for respondents no.2 to 6 and Mr. Pal is appearing for respondents no.9 to 12. Hence, all these three sets of Advocate are entitled to costs of Rs.50,000/- each. Hence, the following order :

(i)the Writ Petition shall stand dismissed with costs.

(ii)the petitioners to pay costs of Rs.50,000/- each to the Advocates appearing on behalf of respondents no.1 to 7, respondents no.2 to 6 and

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respondents no.9 to 12 within four weeks from  
today.

**(Sandeep K. Shinde, J)**

**(K.K. Tated, J)**

Neeta  
Shailesh  
Sawant

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