IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2598 OF 2017

ALONGWITH

NOTICE OF MOTION NO. 151 OF 2018
IN
WRIT PETITION NO. 2598 OF 2017

Hotel Shantidoot ...Petitioner
V/s.
The Authorised Officer,
Dombivali Nagari Sahakari Bank Ltd.
and anr. ...Respondents

* * * *

Mr. Vinod Kothari a/w. Mr. Gauri Joshi I/by. M/s. Apex Law Partners, Advocate for the petitioner.

Mr. Ashutosh R. Gole, Advocate for the respondents.

Coram : K.K. Tated, &

Sandeep K. Shinde, JJ.

Monday, 24th September, 2018.

P.C. :

1. Heard Learned Counsel for the parties.

2. The Learned Counsel for the petitioner submits that,

they already filed restoration Misc. Application No. 1332 of 2017 before the Debt Recovery Appellate Tribunal (DRAT) at Mumbai for restoration of their Misc. Appeal No.22 of 2017. He further submits that, during the pendency of the present petition, the respondent-Bank took possession of their property on 2nd December, 2017. Hence, they preferred Notice of Motion for restoration of their possession.

3. After arguing for some time, the Learned Counsel for the petitioner after taking instructions from his client, submits that, they may be permitted to withdraw the present writ petition, as well as, Notice of Motion in view of subsequent development with direction to the Tribunal to decide their Misc. Application No. 1333 of 2017 and Restoration Misc. Application No. 1332 of 2017 as early as possible with liberty to the petitioner to prefer appropriate application for restoration of possession of their property. To that effect, he has given in writing. The same is taken on record and marked 'X' for identification. The same is

accepted.

4. Till further orders from the DRAT, respondent-Bank is restrained from taking any coercive action against the petitioner i.e. sale of the property.

5. Petition, as well as, Notice of Motion stands disposed off as withdrawn. No order as to costs.

6. The Learned Counsel appearing on behalf of the respondent-Dombivali Nagari Sahakari Bank Ltd. submits that they also preferred Writ Petition No. 2934 of 2018 challenging the order dated 18th October, 2017 passed by the DRAT at Mumbai in Misc Application No. 1058 of 2017 mainly on the ground, how to calculate the amount as per Section 18 of the SARFAESI Act. He submits that, in the present proceedings, DRAT directed the petitioner to deposit 25% notice amount under the said Act. He submits that, our High Court in the judgment of **MRB Roadconstruction Pvt. Ltd. V/s. Rupee Co-operative**

Bank Ltd. reported in 2016 (3) Maharashtra Law Journal 589 specifically held that the amount of deposit should be determined on the basis of the amount of debt due by the borrower to the secured creditor on the date when the appeal was filed in the DRAT. He relies upon para-18 of the said judgment which reads thus :

> *"18. On a plain reading of the 2nd proviso to section 18(1) of the SARFAESI Act read with the definition under the word "debt" as defined in section 2(g) of the RDDB Act, it is clear that before an appeal can be entertained by the DRAT, the borrower has to deposit 50% of the amount of debt due from him as claimed by the secured creditors or as determined by the DRT whichever is less. If there is no determination of the debt by the DRT under the provisions of the RDDB Act, then the borrower would have to deposit 50% of the amount of debt due from him as claimed by the secured creditors. The provision on a plain reading does not in any way exclude taking into consideration the future interest that is accrued on the debt owed by the borrower to the secured creditor. In fact,*

the definition of the word "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution. Therefore, if the claim made by the secured creditor in the section 13(2) notice includes future interest, the same would certainly be included in the "amount of the debt due" from the VRD 14 of 26 RPW78.15 FINAL.doc borrower to the secured creditor as contemplated under the 2nd proviso to section 18(1) of the SARFAESI Act. There is therefore no justification to hold that it is only the figure that is mentioned in the section 13(2) notice that is to be taken into consideration and not the future interest accrued on the said sum, whilst determining the deposit amount under the 2nd proviso to section 18 of the SARFAESI Act. The amount of deposit would have to be determined on the basis of the amount of debt due by the borrower to the secured creditor on the date when the appeal is filed in DRAT. This would not only include the amount mentioned in the section 13(2) notice but also interest accrued thereon till the date of filing of the appeal under section 18 of the SARFAESI Act. To our mind, this is the only interpretation that

> *is possible of the 2nd proviso to section 18 of the SARFAESI Act. If we were to accept the contention of the Petitioner that the amount to be deposited by the borrower [under the 2nd proviso to section 18(1)] would be only on the basis of the sum/figure as mentioned in the section 13(2) notice and not the interest accrued thereon after the date of the said notice, the same would be violating the plain language of the statute. To interpret the 2nd proviso to section 18(1) in this fashion, to our mind, would clearly violate the plain and unambiguous language of the said section."*

7. The Learned Counsel for the respondent-Bank submits that, their Writ Petition stands disposed off as infructuous by order dated 24th November, 2017. He submits that, in view of the subsequent development, they preferred Notice of Motion (Lodg) No. 96 of 2018 for restoration. He submits that, in the interest of justice, this Hon'ble Court be pleased to allow the Bank to take out appropriate application before the DRAT for their grievance in determining the amount required to be

deposited by the petitioner under Section 18 of the SARFAESI Act i.e. calculation of 25% amount and that application shall be decided on its own merits.

8. At this stage, Mr. Kothari, Learned Counsel appearing on behalf of the petitioner submits that, if liberty is granted to the respondent-Bank to take out appropriate application for that purpose, then that to be decided on its own merits. Keeping all contentions of both the parties open including the order passed by the Apex Court in the present matter. Hence, the following order :-

(A). The Writ Petition stands disposed off as withdrawn with direction to the DRAT at Mumbai to decide Misc. Application No. 1333 of 2017 and Restoration Misc. Application No. 1332 of 2017 in Misc. Appeal No.22 of 2017 as early as possible, but in any case, on/or before 22nd December, 2018 after hearing both sides.

(B). Liberty is granted to the petitioner, if they so desire, to prefer appropriate application before the DRAT in Misc. Appeal No. 22 of 2017 for restoration of their property and that to be decided on its own merits after hearing both the sides.

(C). Liberty granted to the respondent-Bank to prefer appropriate application for their grievance about calculation to 25% amount as per order dated 18th October, 2017 passed by the DRAT at Mumbai in Misc. Application No. 508 of 2017.

(D). The application preferred by the respondent-Bank to be decided on its own merits after hearing both the sides.

(E). Till further orders from the DRT, the respondent-Bank is restrained from taking any

coercive action against the petitioner i.e. sale of the property.

(F). All contentions of both the parties are kept open on the question of calculation of 25% amount as per order dated 18th October, 2017.

(SANDEEP K. SHINDE, J) **(K.K. TATED, J)**