Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 27 OF 2019

M/s. Goenka Jewellers & Ors. ...Petitioners

Versus

Uco Bank ...Respondent

Mr. Mayur Khandeparkar, a/w Mr. Siddharth Samantaray, i/by Mr. Puneet . Gogad, for the Petitioners.

Mr. Rafeeq Peermohideen, a/w Mr. O.A. Das, for the Respondent.

CORAM : A.A. SAYED &
RIYAZ I. CHAGLA, JJ.

DATE : 8 January 2019

ORDER :

1. The prayers sought in this Writ Petition under Article 226/227 of the Constitution of India read as follows :-

"*(i) This Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari, or* *any other similar writ order or direction after calling for the papers and proceedings of Securitisation Application No. 473 of 2018 from Debts Recovery Tribunal-II, Mumbai and after examining the legality and propriety of the impugned order dated 29/11/2018 passed in Review Application No. 05 of 2018 as a consequences of impugned order dated 27/08/2018 thereof be pleased to quash and set aside the same;*

(ii) This Hon'ble Court may be pleased to stay the act of taking physical possession of the said properties till disposal of present Writ Petition and thereafter till disposal of Securitisation Application."

2. The prayers in this Petition indicate that the Petitioners are essentially challenging the order dated 29th November 2018 passed in the Review Application, which order is stated to be as a consequence of the order dated 27th August 2018 passed in the Interim Application No. 1085 of 2018 in Securitisation Application No. 473 of 2018. Both the aforementioned orders are however referred to as impugned

orders.

3. Section 35 of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "***SARFAESI Act***") provides that the SARFAESI Act shall have effect notwithstanding anything inconsistent in any other law. Under Section 18 of the SARFAESI Act, "*any order*" passed by the Debts Recovery Tribunal ("***D.R.T.***") is appealable before the D.R.A.T. Under the proviso to Section 18 of the SARFAESI Act, an Appeal cannot be entertained, unless 50 percent of the dues are deposited with D.R.A.T. which can be reduced to 25 percent by D.R.A.T. for reasons to be recorded in writing. The Review Application having been dismissed, the original order dated 27th August 2018 does not merge with the order dated 29th November 2018 in the Review Application [see ***DSR Steel (Private) Limited Vs. State of Rajasthan & Ors***.[1]]. The original order dated 27th August 2018 would therefore, be appealable before the D.R.A.T.

1 ***(2012)6 SCC 782***

wherein the Petitioners are required to be made a pre-deposit, even assuming the order dated 29th November 2018 passed in Review Application was not appealable, as sought to be contended by learned Counsel for the Petitioners. The original order dated 27th August 2018 having not been challenged before the D.R.A.T. and Petitioners having not made the statutory deposit, we were not inclined to entertain this Petition.

4. The judgment of the Division Bench of this Court in ***Kotak Mahindra Bank Ltd. Vs. R.C. Shah (Deceased) through his legal heirs Ms. Samrudhi Sailesh Gandhi & Ors.***[2] was under the RDDB Act and not under the SARFAESI Act and would not be an authority for the proposition that since the order rejecting the Review Application is not appealable, the Petition can be entertained, in the facts of the present case. It would open floodgates, if parties are allowed to approach this Court directly from the orders passed by D.R.T. in Review Application and by-pass the mandate of making the statutory

2 ***Judgment dated 23.01.2012 in Writ Petition (L) No. 2886 of 2011***

deposit under Section 18 of the SARFAESI Act. It is required to be noted that the original order dated 27th August 2018 is after all an interim order of D.R.T. of which the review was sought.

5. Notwithstanding the above, during the course of arguments, we put it to the learned Counsel for the Petitioners if the Petitioners are willing to deposit 50 percent of the dues. The dues as stated by the learned Counsel for the Respondent-Bank are approximately Rs. 29.00 Crores. The learned Counsel on instructions states that the Petitioners are not in a position to pay the same. After conclusion of the arguments, we again asked the learned Counsel for the Petitioners if the Petitioners are willing to pay 25 percent of the dues to which the learned Counsel upon instructions candidly stated that the Petitioners are not in a position to arrange for that too.

6. In the circumstances, the Writ Petition is dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.] **[A.A. SAYED, J.]**