IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3859 OF 2019

Mr. Parvez Alam Siddique ..Petitioner
Versus
Bank of India ..Respondent

Mr. Vivek V. Phadke, Advocate for the Petitioner.
Mr. Santosh Jagtap i/by Anand Shinde & Co., Advocate for the Respondent.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 3rd DECEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] It is a case where payments made as per convenience of the Petitioner has led to unnecessary waste of judicial time.

3] The credit availed by the Petitioner from Bank of India came in default and on 14.11.2014 the Bank issued a notice under Section 13(2) of the SARFAESI Act, 2002 claiming ₹ 53,67,839/- as the outstanding as of 14.11.2014.

4] The Petitioner thereafter started making payments to the Bank and when the Bank proceeded to enforce the security, he filed SA No.13 of 2016 before the Debts Recovery Tribunal.

5] By an order dated 13.01.2016 learned DRT-III restrained the Bank from taking possession of the secured assets upon the condition that the Petitioner deposits ₹ 5 lakhs as on 14.01.2016, ₹ 12 lakhs as on 04.02.2016 and ₹ 13 lakhs as on 25.02.2016. The Tribunal noted that the Petitioner had deposited ₹ 15 lakhs post 14.11.2014 that the Bank had retained in a no lien account. Thus the learned DRT permitted to Bank to adjust said ₹ 15 lakhs towards the loan account.

6] It appears that the Petitioner filed another SA which resulted in an Appeal being filed before the learned DRAT resulting in the order dated 19.03.2019 being passed. Said order is challenged in the Writ Petition. The said order dated 19.03.2019 notes that as of 14.11.2014, ₹ 53,67,839/- was to be paid. It notes further deposits made by the Petitioner and records that after adjusting all the amounts as of 13.03.2019, ₹ 20,16,628/- was payable. The impugned order records that this amount includes legal charges and other miscellaneous charges claimed by the Bank. Deducting said amounts learned DRAT has held that outstanding dues in the loan account is ₹ 17,45,509/-. 50% thereof ₹ 8,72,754/- was to be deposited by the Applicant as a condition to entertain the Appeal. The Tribunal directed said 50% amount to be deposited. The order was followed by another order dated 27.03.2019 dismissing the Appeal on account of non-deposit of ₹ 8,72,754/-.

7] During the pendency of the instant Writ Petition, the

Petitioner has deposited ₹ 4,73,000/- on 25.04.2019.

8] As per the statement of account handed over by learned counsel for the Bank as of 10.01.2019 balance amount payable by the Petitioner is ₹ 5,87,883.29.

9] In view of the afore-noted facts highlighting that much water has flown down the channel post 14.11.2014 as a result of the Petitioner depositing amounts with the Bank from time to time and outstanding loan is only is sum of ₹ 5,87,883.29, we dispose of the Writ Petition directing the Bank not to enforce the demand in terms of its notice dated 14.11.2014. The Respondent Bank shall issue a fresh notice to the Petitioner indicating the amount payable as of the date of the notice. If the Petitioner does not dispute liability to pay said amount, the Petitioner would pay the amount within 60 days of the notice. Needless to state that interest which would accrue over said 60 days shall also be cleared. If the Petitioner disputes the amount claimed, he would respond to the notice requiring the Bank to pass an order under Section 13(3A) of the SARFAESI Act, 2002. The Petitioner would be entitled to statutory remedies if he is aggrieved by the said order.

10] At this stage, learned counsel for the Petitioner states that the Bank has taken physical possession of the secured asset.

11] In view of the fact a very meager amount remains to be paid, we direct the Bank to return the physical possession of the secured asset within seven days from today.

SMT. BHARATI DANGRE, J **CHIEF JUSTICE**