

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8634 OF 2019

M/s. Aditya Diamonds

..Petitioners

Versus

Small Industries Development Bank of India
& Anr.

..Respondents

Ms. Nitali Salunkhe i/by Mr. Harshad Sathe & Saurabh Butala,
Advocates for the Petitioners.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 13th DECEMBER, 2019

P.C.

1] When the shoe did not pinch the Petitioners but troubled the 1st Respondent, Petitioners were happy.

2] Availing a credit from Respondent No.1 and being in default, the sum having swollen to ₹ 19,85,80,509/-, the Respondent No.1 proceeded under SARFAESI Act, 2002.

3] The 1st Respondent obtained an order under Section 14 of the SARFAESI Act, 2002 from the learned Chief Metropolitan Magistrate, Mumbai facilitating taking over the physical possession of the secured asset being Flat No.61, 6th Floor, A-Wing, Tanhee Heights, Nepeansea Road, alongwith parking area. Application filed by the 1st

Petitioner under Section 17 of the SARFAESI Act, 2002 was dismissed by learned DRT-II, Mumbai on 07.10.2004. Appeal filed by the Writ Petitioner No.3 was dismissed by learned DRAT on 28.01.2005. Writ Petition filed in this Court challenging the order passed by the learned DRAT was dismissed on 01.02.2005. The onward march took the Petitioners before the Supreme Court when SLP (C) No.6489 of 2005 filed by them was registered. Issuing notices the Supreme Court granted interim relief requiring the Petitioners to deposit ₹ 1 Crore with the 1st Respondent and upon compliance the sale of the secured asset was stayed. There being non-compliance, the Supreme Court vacated its interim order dated 18.03.2005 on 18.08.2006. Thereafter the Petitioners claim to have entered into an One Time Settlement (OTS) with the 1st Respondent on 15.03.2007 on the terms and conditions contained in Respondents letter dated 15.03.2007, as per which the Petitioner No.1 was to pay Respondent No.1 agreed sum of ₹ 8.52 Crores in installments commencing from 15.05.2007 and ending on 01.05.2008. Post dated cheques were issued. The pleadings in the Petition get fussy at this stage for the reason it is simply pleaded that first few installments were paid and thereafter there was default in payment of installments to satisfy the OTS settlement. It is pleaded that thereafter further payments were made between 13.09.2007 to 11.10.2007. There are no pleadings as to what was the amount of the equated monthly installments which was defaulted and in what manner the same was rectified.

4] Be that as it may, it is pleaded that the Respondent No.1 which had put on hold the order obtained by it under Section 14 of the SARFAESI Act, 2002 sought a direction from the learned Chief Metropolitan Magistrate to enforce the said order and that thereafter the 1st Petitioner paid ₹ 9.25 Crores and requested the 1st Respondent to return cheques in sum of ₹ 53.25 issued by it. It is pleaded further that the Petitioner No.1 paid ₹ 44 Lakhs.

5] The fussy pleadings do not throw light as to why ₹ 9.25 Crores was paid and why the Petitioner No.1 paid further sum of ₹ 44 Lakhs.

6] Some clue emerges when in paragraph 12 of the Petition, it is pleaded that in terms of the order dated 06.06.2008 passed by learned DRAT the Petitioner No.3 was allowed to deposit ₹ 4.51 Crores with Respondent No.1 without prejudice to the contention of the Petitioners that said amount was in excess. The Petitioners claim that they moved an application thereafter seeking declaration that the OTS amount had been paid. Learned DRT passed an order declaring that the 1st Respondent was entitled to ₹ 11,24,48,888/- and realise such amount which was payable after giving credit to the amounts which were paid by the Petitioners to the Respondent No.1. The Petitioners filed Appeal No.59 of 2009 against the said order dated 05.02.2009 passed by DRT-II, Mumbai and as a condition of the requirement of pre-deposit, deposited ₹ 1.25 Crores so that the Appeal filed could be heard.

7] The Appeal was disposed of on 26.05.2010. The order dated 05.02.2009 passed by DRT-II, Mumbai was set aside. Direction issued was that the Petitioners were liable to pay the OTS amount accrued with interest on the delayed payments. Respondent No.5 challenged order dated 26.05.2010 passed by learned DRAT before this Court. The said Writ Petition was dismissed on 10.07.2019. But during the pendency of the Writ Petition, the Petitioners had filed an application before the learned DRAT seeking adjustment of the amounts which were required to be paid with reference to the sum of ₹ 1.25 Crores deposited before the learned DRAT as a condition precedent to the Appeal being heard against the order dated 05.02.2009 passed by DRT-II, Mumbai. On 06.07.2010 learned DRAT passed an order directing 1st Respondent to refund ₹ 75 Lakhs with interest thereon to the Petitioners while retaining the sum of ₹ 50 Lakhs.

8] In the aforesaid backdrop of the fussy facts, it is pleaded that Petitioners request to learned DRAT to decide pending applications was not being accorded a consideration on the false stand taken by the Bank that the order dated 10.07.2019 passed by this Court had been challenged before the Supreme Court. As per the Petitioners, the access to the website of the Supreme Court shows no such SLP having been filed. After walking such a long route with half baked facts, the prayer made in the Writ Petition is to issue a direction to the learned DRAT to expeditiously dispose of the applications filed

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by the Petitioners and the grievance is to the learned DRAT, Mumbai not accepting praecipies filed by the Petitioners seeking urgent listing of the hearing of the applications pending before learned DRAT.

9] We dispose of the Writ Petition directing Presiding Officer of DRAT to dispose of within 3 months the Misc. Applications filed by the Petitioners in Appeal No.59 of 2009.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE