# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 11523 OF 2019

Mr. Rajesh Bansraj Chauhan & Ors. ..Petitioners

Versus

M/s. Tata Capital Financial Service Ltd. ..Respondent

Mr. Charles D'Souza a/w Ms. Aneesa Cheema, Mr. Kushal Sawant i/by Mr. Puneet Gogad, Advocate for the Petitioners.
Mr. Bhavik Manek a/w Ms. Nikhil Mehta i/by KMC Legal Venture, Advocate for the Respondent.

**CORAM : PRADEEP NANDRAJOG, C.J. &**
**SMT. BHARATI DANGRE, J.**

**DATE : 8th NOVEMBER, 2019**

**P.C.**

**1]** Since counsel as above appears for the Respondent on an advance copy of the Writ Petition served upon the Respondent, we have heard learned counsel for the parties at the stage of admission for disposal of the Writ Petition.

**2]** Grievance in the Writ Petition is to an order dated 11th

October 2019 disposing of M.A. No.694 of 2019 filed by the Petitioners in Misc. Appeal No.70 of 2019 which laid challenge to an interim order dated 24.09.2019 passed by DRT-II, Mumbai in I.A. No.958 of 2019 in S. A. No.329 of 2018. It is thus apparent that challenge in S.A. No.329 of 2018 before the Debts Recovery Tribunal questioned measures initiated by the Respondent under SARFAESI Act, 2002. It was by way of proceedings contemplated by Section 17of the said Act.

**3]** A perusal of the order dated 24.09.2019 passed by DRT-II, Mumbai, shows that the subject matter of challenge in Misc. Appeal No.70 of 2019 before learned DRAT was that the Petitioners had questioned an order passed by the learned Chief Metropolitan Magistrate on 27.08.2019 followed by a notice dated 13.09.2019 issued by the Court Commissioner fixing 04.10.2019 as the date to take physical possession of the secured assets. Prayer made to restrain the Court Commissioner from taking possession of the secured assets was negated by the Presiding Officer of DRT-II on the reasons that there being a default the asset forming security for the loan was *prima facie* liable to be taken possession of. It was noted that the overdue installments are 26 in number aggregating to Rs.1.02 crores. The Presiding Officer of DRT-II ordered if defaulted amount was paid before the date of taking over physical possession of the secured assets, then alone the Respondent would not proceed to take physical possession of the secured asset.

**4]** Before the Tribunal the Petitioners had alleged a fraud in the creation of the secured asset and we find that there is no *prima facie* reflection on said plea in the order dated 24.09.2019. In Appeal the view taken by learned DRAT is that in proceedings under Section 17 of the Act DRT cannot look into the said aspect of the matter i.e. fraud in creation of the security and the task of the Tribunal is simply restricted to see whether the provisions of Section 13 of the Act have been complied with.

**5]** Suffice it to state that this is an incorrect enunciation of law. In proceedings under Section 17 of the Act if filed after measures have been taken by the secured creditor under Section 14 of the Act same would encompass challenge to creation of the mortgage. If fraud is alleged learned DRT has to deal with said submissions.

**6]** An Appeal under Section 18 of the Act against an order passed under Section 17 thereof requires 50% of the debt due to be deposited as a condition precedent for entertaining of an Appeal and as per the 3$^{rd}$ Proviso of Sub Section (1) of Section 18 for reasons to be recorded in writing the Appellate Tribunal can reduce the amount by 25% of the debt.

**7]** Since learned DRAT has refused to exercise jurisdiction on a wrong principle of law and because of the fact that the learned DRAT could at best have reduced condition of the deposit to 25% of the debt due, we dispose of the Petition setting aside the impugned order dated 11.10.2019 directing restoration of M.A. No.694 of 2019 with a direction to learned DRAT to decide the same within three weeks from today and because of the fact that the learned Appellate Tribunal can at best, reduce a condition of pre-deposit of 25% of the debt due, by way of interim measure we direct status-quo to be maintained upon the Appellant depositing with the Respondent 25% of the debt due to the Respondent within a week from today.



SMT. BHARATI DANGRE, J CHIEF JUSTICE