IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14508 of 2020

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AMITBHAIJITENDRAKUMAR VYAS
Versus
THE PUNJAB NATIONAL BANK

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Appearance:
MR BM MANGUKIYA(437) for the Petitioner(s) No. 1,2
MS BELA A PRAJAPATI(1946) for the Petitioner(s) No. 1,2
MR. VN. SEVAK(3791) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 16/12/2020

ORAL ORDER

1. This petition under Articles 226 and 227 of the Constitution of India is filed for the purpose of seeking the following reliefs :-

> *"22.(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and to quash and set aside the impugned order dated October 12, 2020 recorded by the learned Debt Recovery Tribunal in I.A. No. 1600 of 2020 in S.A. No. 156 of 2020.*
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> *(B) Be pleased to issue a writ of mandamus or a writ in the name of mandamus or any other appropriate writ, order or direction and to hold and declare that the interim order recorded by the learned Tribunal be declared as continued till next date of hearing, which is fixed on December 11, 2020;*
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> *(C) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and to direct the respondent Bank to given petitioners breathing time of nine months to make payment of the outstanding dues of the respondent Bank, and till*

then no coercive steps be taken against the petitioners for taking possession of the residential premise of the petitioner;

(D) Pending admission and final disposal of the present petition, be pleased to stay the implementation, operation and execution of the impugned order dated October 12, 2020 recorded by the learned Debt Recovery Tribunal in I.A. No. 1600 of 2020 in S.A. No. 156 of 2020 and further be pleased to restrain the respondent Bank from taking the forcible possession of the residential premise of the petitioners, till next date of hearing i.e. December 11, 2020;

(E) Be pleased to pass such other and further orders as may be deemed fit and proper."

2. Pursuant to the notice issued by this Court, the respondent – Bank has appeared through learned advocate Mr. Vivek Sevak, who pointed out and with emphasis has submitted that against this order under challenge, there is a specific statutory remedy by way of appeal is provided which can be availed of by the petitioners. Upon such submission, without much resistance, Mr. B.M. Mangukiya, learned advocate for the petitioners has submitted that in view of the peculiar background of fact, the protection is granted by this Court vide order dated 05.11.2020, however, the petitioners are ready and willing to approach the appellate authority since statute has provided a specific mechanism to ventilate the grievance and accordingly has not invited any expression on merit on any of the rival contentions and has submitted that the petitioners may be permitted to approach the appellate authority. However, while making such submission, learned advocate Mr. Mangukiya has submitted that in view of the peculiar background of facts, the order dated 05.11.2020 in which interim protection is granted of taking no coercive steps against the petitioners be continued till the petitioners are approaching the appellate authority with

application for seeking interim stay in the appeal, which may be submitted and has requested that till such interim stay application gets decided, the protection given by this Court be continued in the interest of justice.

3. To this submission, learned advocate Mr. Vivek Sevak appearing on behalf of the respondent – Bank has no objection in view of this peculiar background of fact and has submitted that this may not be treated as precedent as the interim protection is granted in view of the special circumstance reflecting in an order dated 05.11.2020.

4. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, since a request has been made to allow the petitioners to approach the authority, the petition deserves to be disposed of on the following line, which would meet the ends of justice.

4.1. The petitioners shall approach the appellate authority namely the Appellate Authority, Mumbai for challenging the impugned order dated 12.10.2020 passed by the learned Debt Recovery Tribunal in I.A. No. 1600 of 2020 in S.A. No. 156 of 2020, within a period of two weeks from today with appeal and interim stay application during the pendency of appeal.

4.2. As and when such appeal including the application for interim stay is moved by the petitioners in the aforesaid time, the appellate authority shall examine, consider and decide the same preferably within a period of ***four weeks*** from the date of the presentation of the appeal.

4.3. It is however, observed that till the appellate authority decides the application for interim stay during the pendency of the appeal to be submitted by the petitioners, in view of this peculiar background of fact, the interim protection which has been granted by this Court vide order dated 05.11.2020 about not taking coercive steps against the petitioner shall continue to operate. It is further made clear that if the petitioner is not approaching the appellate authority within a period of two weeks, this interim protection which is extended shall automatically stands inoperative.

4.4. It is further clarified that this Court has not expressed any opinion of merit with regard to any of the contentions raised in the petition as not called upon by the either side and as such has independently left it open for the appellate authority to take appropriate decision in accordance with law after due compliance of principles of natural justice and shall pass a reasoned order. It is made clear that this order is passed in peculiar background of fact and with the consent of the learned advocates and the same shall not be treated as precedent.

5. With this observations and directions, the present petition stands disposed of as not pressed.

(ASHUTOSH J. SHASTRI, J)

NAIR SMITA V.