

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO.1418 OF 2021

IN

WRIT PETITION NO.2484 OF 2021

AND

WRIT PETITION NO.2484 OF 2021

Invent Assets Securitisation and
Reconstruction Pvt.Ltd.

...Applicant

In the matter between

Invent Assets Securitisation and
Reconstruction Pvt.Ltd.

...Petitioner

vs.

The Official Liquidator of
M/s.GGT Kaypee Limited & Anr.

...Respondents

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Mr.Venkatesh Dhond, Senior Advocate with Ms.Priyanka Fadia i/b.
Mr.Shashank Fadia, Mr.Dharnik Shah and Ms.Mamta Thakker for Petitioner.
Ms.Sapna Raichure - Respondent No.1/Official Liquidator.

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**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JULY 07, 2021

PC :

1. By this interim application, the writ petitioner/applicant (hereafter the petitioner”, for short) seeks amendment of the writ petition.
2. In the writ petition, the challenge is to an order dated December 28, 2020 passed by the Chairperson, Debts Recovery Appellate Tribunal, Mumbai (hereinafter “the appellate tribunal”, for short) in M.A. No.123 of 2016 in Appeal No.23 of 2016. By such order, M.A. No.123 of 2016 (being an application seeking waiver of pre-deposit in terms of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993) filed by the appellant (Official Liquidator) was allowed.
3. Mr. Dhond, learned senior counsel for the petitioner, seeks a direction on the appellate tribunal, before whom Appeal No.23 of 2016 is pending, to consider the documents that have since been procured by the

petitioner to the effect that the property (Bhasin Villa) is mortgaged. Incidentally, M.A. No.123 of 2016 was allowed by the appellate tribunal granting complete waiver of pre-deposit for the *prima facie* reason that the said property was not shown to have been mortgaged.

4. We find that no application has been filed by the petitioner before the appellate tribunal to bring on record such documents as referred by Mr. Dhond. He, at this stage, submits that the writ petition would be withdrawn, if liberty is granted to the petitioner to apply before the appellate tribunal for bringing on record such documents with a prayer to reconsider the grant of complete waiver of pre-deposit.

5. In our view, the writ petition ought not to be entertained because the petitioner did not place any documents before the appellate tribunal to establish that the subject property is a mortgaged property. Be that as it may, since a prayer for withdrawal has been made, we allow such prayer for withdrawal of the writ petition. The writ petition stands dismissed as withdrawn, without costs.

6. However, this order of dismissal shall not preclude the petitioner to apply before the appellate tribunal for bringing on record documents for its consideration to revisit the order granting complete waiver and if such an application is made, the appellate tribunal shall proceed to consider and decide such application in accordance with law. All contentions on the merits of the rival claims are kept open.

7. In view of the aforesaid order, the interim application does not survive. It also stands disposed of, without costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)