

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1376 OF 2021

- PETITIONERS:**
1. Shri Jaidev Laxmidas Panchmatia,
(Suspended Director M/s. L.B. Industries
Pvt. Ltd.), aged about 65 years, Occ.
Business, R/o. Plot No. 2-A, Mount Road
Extension, Sadar, Nagpur-440 001
 2. Shri Shyamal Jaidev Panchmatia,
(Suspended Director M/s. L.B. Industries
Pvt. Ltd.), aged about 35 years, Occ.
Business, R/o. Plot No. 2-A, Mount Road
Extension, Sadar, Nagpur-440 001

...VERSUS...

RESPONDENT: The Authorized Officer,
Union Bank of India,
Gandhibagh Branch, 34/2,
Commercial Complex, Central Bazar
Road, Ramdaspath, Nagpur.

Shri R.H.Agrawal, Advocate for petitioners
Shri S.D.Ingole, Advocate for respondent

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**
DATE : 17/03/2021.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1] Heard Shri Agrawal, learned counsel for the petitioners
and Shri Ingole, learned counsel, who appears by waiving notice for
the respondent-bank.

2] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3] The main grievance of the petitioners in this case is that there is a violation of principle of natural justice and thus, it has occasioned grave failure of justice in this case.

4] The petitioners submit that they have challenged the action of the respondent-Bank under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act), in which the petitioners have sought interim relief by filing an application. According to the petitioners, the whole action of the respondent Bank is not in accordance with the provisions contained in the SARFAESI Act and also in violation of various conditions of fulfillment by which the secured assets can be put to auction for realization of the debt due to the bank. The petitioners submit that their such application for grant of interim relief is not even being

taken up by the Debts Recovery Tribunal (in short DRT) and thus, the doors of justice have been closed on the petitioners.

5] Learned counsel for the respondent vehemently opposing any prayer including the limited prayer of issuing necessary direction for taking up the interim application by the D.R.T. Mumbai, submits that earlier in the year 2019, the petitioners had filed a similar application seeking interim stay to the auction of one of the secured assets and that application was rejected by the D.R.T and therefore, no relief whatsoever including the interim relief be granted to the petitioners.

6] The learned counsel for the petitioners submits that this fact of rejection of the interim application earlier by the D.R.T has been mentioned by the petitioners in this petition, but, according to him, the property that was being sold through public auction at that time was an open plot situated at Mouza Pipla and that this plot, one of the secured assets, has also been sold out by the respondent Bank in public auction. He submits that the present action of putting to public auction various secured assets relates to six different

properties, which include residential house of the petitioners, hotel of the petitioners, godowns of the petitioners and the like. He submits that the properties which are subject matter of the present dispute are different from one which was sold in the public auction in the year 2019.

7] Learned counsel for the respondent Bank admits that the property which was sold in public auction in the year 2019 was a different property than the properties which are the subject matter of the present dispute. If this is the case, we do not understand as to why the learned counsel for the respondent, upon instructions, made the rejection of the earlier interim application by D.R.T. as a ground for opposing the prayers made in this petition including the limited prayer.

8] Be that as it may, there is no dispute about the fact that there has been a denial of any opportunity of hearing to the petitioners by the D.R.T. Mumbai, which is the incharge forum for D.R.T, Nagpur. The petitioners have filed along with the petition, a copy of Roznama dated 12.03.2021, which is signed by the Registrar,

DRT, Nagpur. It states that having discussed the matter of placing on board for urgent hearing the application, the decision taken is that the matter cannot be listed on 16.03.2021 or 17.03.2021 or 18.03.2021. The reasons for not listing of the matter on available dates are, prevalence of Covid pandemic, difficulty in virtual hearing platform, heavy workload at DRT, Mumbai and non availability of dates and slots at DRT, Mumbai. These reasons, in our opinion, are totally irrelevant for and alien to the concept of reasonableness and justice as we understand. The opportunity of hearing is one of the fundamental principles of the doctrine of natural justice and it has been held umpteen number of times by the Supreme Court that this principle runs through Articles 14 and 21 of the Constitution of India like a common thread and has a brooding omnipresence so far as fundamental rights are concerned. The opportunity of hearing being part of a principle of natural justice is one of the fundamental rights and for enabling a person to realize his fundamental right, such reasons as prevalence of Covid pandemic, difficulty in virtual hearing platform, heavy workload, non availability of dates and slots etc., cannot be put forward as a shelter for avoiding the corresponding duty. Therefore, we are inclined to grant limited prayer of the

petitioners regarding issuance of suitable direction to the incharge DRT, Mumbai.

10] Accordingly, we partly allow the petition. The incharge DRT, Mumbai, is requested to grant virtual or physical hearing as per convenience and the rules at the earliest to the petitioners and urgently hear the interim application filed by the petitioners and decide it in accordance with law, within a period of two weeks from the date of the order. We further direct that the public auction of the subject properties scheduled to be held on 18.03.2021 be postponed to a convenient future date, which may possibly be after three weeks from the date of this order so as to give sufficient time to the Incharge D.R.T. Mumbai, to decide the interim application in accordance with law.

11] Rule accordingly. No costs.

JUDGE

JUDGE