

**MAT 57 of 2022
With
CAN 1 of 2022**

**Shaila Motors Private Limited & Ors.
Vs.
Sm. Sangita Maity & Ors.**

Mr. Ranjan Kali
Ms. Nabanita Dutta
Mr. Suraj Bhattacharjee
Ms. Mitul Chakraborty

... ... for the appellants

Mr. Santosh Kr. Ray
Mr. Saswat Nayak

... ... for the respondent no. 1

Mr. Om Narayan Rai

... ... for the respondent no. 2

This appeal is at the instance of the private respondents in the writ petition no. 21010 of 2021, being aggrieved with the interlocutory order of the learned Single Judge dated 14.01.2022 whereby the writ petitioner has been granted the interim protection.

It has been pointed out that the appellant is a borrower and aggrieved with the auction sale notice as also sale of the secured assets, he had filed an application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal (DRT) and the said application was allowed by the DRT by the order dated 15.11.2021 passed in SA 171 of 2020 and aggrieved with the same, the respondent no.1(writ petitioner) had filed the WPA 21010 of 2021 before the learned Single Judge and the learned Single Judge while passing the impugned interlocutory order dated 14.01.2022 had prima facie reached to the conclusion that the sale did not suffer

from any legal infirmity and accordingly granted interim protection to the respondent(writ petitioner).

Learned counsel appearing for the respondent no.1(writ petitioner) has submitted before this Court that the writ petition was filed since at that time DRAT was not functioning but now the DRAT is functioning. Therefore, the writ petitioner has already filed a second appeal before the DRAT which is registered as diary no. 644 of 2021 and now, the respondent(writ petitioner) intends to prosecute his pending appeal before the DRAT instead of prosecuting the present writ petition before the learned Single Judge.

He has also submitted that the respondent(writ petitioner) has already filed an application for stay before DRAT. Therefore, limited period interim protection be granted to the writ petitioner so that he can pursue his stay application/appeal before the DRAT and a direction be issued for expeditious disposal of the same.

Learned counsel for the appellant has no objection to the same, except that the learned Single Judge in the order under challenge has recorded certain prima facie findings which will come in the way when the matter is proceeded by respondent(writ petitioner) before the DRAT.

We find that while passing the interim order learned Single Judge has recorded some prima facie findings which may cause prejudice to the appellant in the proceedings before DRAT.

Having regard to the aforesaid circumstances of the case, we substitute the order of the learned Single Judge by directing that the parties will maintain status quo in respect of possession and alienation of the property in question existing as on today for a period of two weeks.

The appellant will be at liberty to move to the DRAT for hearing of the pending application for stay within this period and we are hopeful that DRAT will duly consider the prayer so made by the appellant.

In view of this order, nothing survives in the writ petition. Therefore, we grant liberty to the appellant to move before the learned Single Judge for withdrawal of the writ petition.

We also make it clear that the DRAT will decide the appeal and also the application for stay on its own merit without being influenced by any observation made by this Court in the order passed in the present appeal.

The DRAT will make an endeavour to decide the appeal, itself expeditiously.

The appeal along with the connected application is disposed of.

(Prakash Shrivastava, C.J.)

(Krishna Rao, J.)