

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO.12756 OF 2021

**SANTOSH SHRIDHARRAO VYAVAHARE
VERSUS
INDIAN OVERSEAS BANK & OTHERS**

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Advocate for the petitioner : Mr.R.S.Deshmukh, Senior
Counsel i/b. Mr.Amol R.Joshi

AGP for Respondent-State : Mr.S.G.Sangle

Advocate for Respondent no.1 : Mr.A.N.Sabnis h/f.
Mr.S.R.Vakil

Advocate for respondent no.4 : Mr.A.P.Bhandari

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**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 27.04.2022

P.C. :

1. We have perused the order passed by this Court
on 22nd November, 2021, which reads as under :-

1. The learned senior counsel for the
petitioner submits that, the petitioner has filed
Securitization Application bearing No. 3/2013
before the DRT Aurangabad challenging the
auction of the respondents under Section 13 (4)
of the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as 'SARFAESI Act, 2002). The Securitization Application is rejected on 03.08.2021. The petitioner filed an Appeal before the DRAT, Mumbai alongwith interim application. The same is pending. The Presiding Officer of the DRAT is not available since September 2021. The property of the petitioner has been put to auction. One of the contention of the petitioner is that, the property put to auction by the secured creditor is agricultural property and same is exempted from the provisions of the SARFAESI Act, 2002. Reference is made to Section 31 of the SARFAESI Act, 2002.

2. The learned senior counsel further submits that, as the Presiding Officer of the DRAT is not available since September 2021, the petitioner has filed the present petition. The auction has already been conducted of the petitioner's property for an amount of Rs.86 lakhs and odd. The matter of the petitioner cannot be heard in absence of Presiding Officer. The possession be protected.

3. We have entertained the present Writ

Petition on the basis of the statement of the petitioner that, Presiding Officer of DRAT is not available since September 2021.

4. The auction has already taken place and petitioner's property in auction is sold at Rs.86 lakhs and odd as submitted by the learned senior counsel for the petitioner.

5. Issue notice to respondents, returnable on 06.12.2021.

6. Till then, status quo as on today with regard to the possession of the property in question be maintained.

2. We are now informed that the Debts Recovery Appellate Tribunal, DRAT, is available at Mumbai. The petitioner has already preferred an appeal, which, it could have filed had the DRAT been available earlier instead of approaching this Court. An application for interim relief has also been filed. The office objections are to be removed by 5th May, 2022.

3. In view of the above, the learned Senior

Advocate submits, on instructions, that the petitioner desirous to withdraw this petition as the statutory remedy of approaching the DRAT has already been availed of. The only request is that the protection granted by this Court in paragraph 6 be continued for a particular period considering that the amount of Rs.17,14,970/-, is deposited by the petitioner before the learned Appellate Tribunal.

4. The learned Advocate representing respondent no.4 opposes the request of continuation of the ad-interim relief granted by this Court. He submits that pending interim application would be considered by the Appellate Tribunal on its own merits.

5. In view of the above, this petition is disposed off as withdrawn. Since this Court has granted the ad-interim protection in paragraph 6 of the order reproduced above, the said protection would be continued till 24th June, 2022, on the following conditions:-

a] The learned Appellate Tribunal shall consider

the oral submissions of the litigating parties on the interim application filed by the petitioner, on or before 10th June, 2022, and thereafter, pass an order on or before 24th June, 2022.

b] The interim application of the petitioner shall be considered on its own merits by the learned Appellate Tribunal without being influenced by the ad-interim protection granted by this Court earlier.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]

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