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

**WRIT PETITION NO. 23 OF 2022**

Rushikesh Paper Mills Pvt. Ltd.

... Petitioner

*Versus*

The Cosmos Co-op. Bank Ltd.

... Respondent

\*\*\*\*\*

Mr. Harshad Sathe and Mr. Saurabh Butala for the Petitioner.

Mr. Rishab Shah a/w Anshul Anjarlekar i/by Raval Shah & CO. for the Respondent.

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**CORAM: R. D. DHANUKA AND  
S. M. MODAK, JJ.**

**DATE : 5<sup>th</sup> JANUARY, 2022  
(Through Video Conference)**

**P.C. :-**

. By this petition filed under Article 226 of the Constitution of India, the petitioners seek stay of the execution, operation and implementation of the auction notice dated 18<sup>th</sup> December, 2021 issued by the respondent no.1-Bank.

2. The petitioner has obtained loan facilities from the respondent no.1-bank. The Debt Recovery Tribunal, Pune vide order dated 31<sup>st</sup> December, 2021 has partly allowed the Interim Application directing the petitioner to deposit 10% of the amount by 6<sup>th</sup> January, 2022. The petitioner has not deposited the said amount.

3. Mr. Sathe, learned counsel for the petitioner states that though the respondent no.1 had agreed to sanction larger amount of loan to the

petitioner, the petitioner was sanctioned a smaller amount resulting in tremendous financial loss alleged to have been caused to the petitioners.

4. Upon raising a query, the learned counsel for the petitioner states that the petitioner will not be able to deposit the said amount of 10% by 6<sup>th</sup> January, 2022, in view of the precarious financial condition of the petitioner. Mr. Shah, learned counsel for the respondent no.1 vehemently opposes this petition on the ground that though the DRT had suggested the petitioner to deposit 20% of the demanded sum, on the request of the petitioner a liberal order came to be passed asking the petitioner to deposit only 10% of the amount by 6<sup>th</sup> January, 2022. He submits that this auction notice issued by the respondent no.1 is a third attempt made by the respondent no.1 to auction the property. All preparations for conducting the auction of the property of the petitioner are already made. He submits that admittedly the petitioner being not in a position to pay even 10% of the total sum, no indulgence shall be shown to the petitioner.

5. In our *prima-facie* view, the submission of the petitioner that the respondent no.1 though had allegedly agreed to sanction larger amount of loan to the petitioner, has sanctioned lesser amount has caused financial loss to the petitioner and thus the petitioner has bonafide defence to the claims made by the respondent no.1 is not convincing. The order passed by the Tribunal to deposit 10% is very liberal. The petitioner is not in a condition to deposit even 10% of the total sum. Be that as it may, even if the petitioner was sanctioned lesser amount

according to the petitioner, the fact remains that the petitioner has availed of the said facility.

6. The respondent has already made all arrangements for conducting the auction of the property of the petitioner pursuant to the notice dated 18<sup>th</sup> December, 2021. In our view, no case is made out by the petitioner for grant of stay of the auction notice dated 18<sup>th</sup> December, 2021.

7. Writ Petition is devoid of its merits and is accordingly dismissed. There shall be no order as to costs.

**[S. M. MODAK, J.]**

**[R. D. DHANUKA, J.]**