

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

WRIT PETITION NO.10570 OF 2022

Ashwinikumar Mishra and anr. : Petitioners.

Versus

Punjab and Sind Bank and ors. : Respondents.

Mr. Minesh K Shah for Petitioners.

Mr. D B Raghani i/by M/s. Haridas and Co. for Respondent No.1.

Mr. Chandrabhushan Shukla for Respondent No.5.

CORAM : K. R. SHRIRAM &

A. S. DOCTOR, JJ.

DATE : 19th OCTOBER 2022

P.C.

1 Petitioners admittedly are the borrowers who had defaulted and there is recovery certificate issued against Petitioners. Mortgaged property was also sold in auction and Respondent No.5 is the auction purchaser. After the property was auctioned, Petitioners wanted to exercise their rights of redemption and filed application before the Recovery Officer. The Recovery Officer rejected the application by an order dated 22nd August 2022. Against that order an appeal has been preferred before the DRT-I being appeal No.14 of 2022. On 26th August 2022 Respondent No.5 appeared before DRT-I and sought time to file reply to the appeal. Other Respondents also sought time to file reply. Time was granted and the matter was directed to be listed on 12th September 2022.

2 Thereafter Petitioner rushed to this Court by way of this writ petition that was lodged on 6th September 2022. On 14th September 2022, the Court was pleased to pass the following order :-

- “1. Mr. Shah for Petitioners tenders photocopies of two Pay Orders, one for Rs.71,00,000/- issued by ICICI Bank Limited, Yari Road Branch, dated 14th September 2022, in favour of the Registrar, High Court, Appellate Side and the other from Bank of Maharashtra, dated 14th September 2022 for Rs.4,00,000/- in favour of the Registrar, High Court, Appellate Side. The photocopies are taken on record marked ‘X’ and ‘X-1’, respectively for identification.*
- 2. Mr. Shah states that the Pay Orders will be handed over to the Registrar today and proof of handing over the Pay Orders will be served on the Advocates for Respondents today itself. Statement accepted.*
- 3. We have to note that the pay order for Rs.4,00,000/- is purchased in the name of one Ashwani Mishra, who Mr. Shah states, is Petitioner No.1. The pay order for Rs.71,00,000/- is purchased in the name of Mr. Mohammadi Yakub Shaikh, who is Respondent No.6.*
- 4. We make it clear that by directing the Registry to accept*

these pay orders, would not give any special rights to Respondent No.6 either in these proceedings or in the proceedings before the DRT or DRAT or recovery officer. Moreover, Mr. Shah makes a statement that Petitioners will not claim any equity or rights by virtue of depositing this amount of Rs.75,00,000/- and Mr. Shah states that he and his clients have understood that this amount is being deposited voluntarily.

5. *Mr. Shah is seeking ad-interim relief. Refused. In any event, the orders of which he is seeking relief, i.e., orders dated 26th August 2022 and 22nd August 2022 have already been given effect to and nothing remains. Nevertheless, Mr. Shah wishes to pursue this Petition.*
6. *Mr. Shukla and Ms. Raghani seek two weeks time to file reply. Time granted. Rejoinder, if any, to be filed one week thereafter.*
7. *Stand over to 12/10/2022.”*

3 Ms. Raghani informed the Court that the mater was listed before DRT-I on 12th September 2022 for orders on interim reliefs i.e., to stay the effect of order dated 22nd August 2022 passed by the Recovery Officer, and defer issuance of sale certificate, but the matter was adjourned on the ground that this Petition was pending and the next date 21st December 2022.

4 Since Petitioners have already preferred appeal and that appeal is still pending and Petitioners' stay application is pending before DRT-I, we direct Petitioners to pursue that Appeal before DRT-I and DRT-I may pass such order as it deems fit in accordance with law after hearing the parties.

5 As regards amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) that Petitioner has deposited with the Registrar, Appellate Side of this Court, the Registrar, Appellate Side, High Court shall transfer the amount of Rs.75,00,000/- (Rupees Seventy Lakhs only) together with accumulated interest thereon to Registrar, DRT_I/DRT-II to the credit of Appeal No.14 of 2022 or any other new number assigned to it as per the application to be filed by Petitioner to the Registrar, Appellate Side, High Court.

6 DRT-I/DRT-II is requested to dispose the stay application a/w appeal if possible on the next date.

7 Petitioner may approach to DRT-I/DRT-II for ad-interim relief.

8 Petition disposed. No order as to costs.

9 We clarify that we have not made any observations on the merits of the matters.

(A. S. DOCTOR, J.)

(K. R. SHRIRAM, J.)