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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15261 OF 2022

Vishwanath Premnath & Ors. … Petitioners

vs.

Punjab National Bank
(Formerly known as Oriental Bank of
Commerce) & Ors … Respondents

……

Mr. Mahesh B. Karule for the Petitioners.
Mr.Rakesh Singh with Ms. Heena Shaikh i/b. M.V. Kini & Co. for Respondent No.1 - Bank.
Mr.Romit Harshad Savani, Ms. Neeta Laxmidas Savani and Mr. Harshad Laxmidas Savani, Auction Purchasers/ Respondent Nos. 2 to 4 are present in the Court.

…...

CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.

DATE : 13 DECEMBER 2022

P.C.:

Heard the learned Counsel for the parties.

2. The Petitioners have challenged the order passed by the Debt Recovery Appellate Tribunal, Mumbai dated 17 October 2022. The impugned order is passed on the application made by the Petitioners bearing misc. application No. 441 of 2012 in appeal no. 115 of 2012 filed by the Appellants for waiver reduction of the

statutory deposit to be made under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 for entertaining the appeal. The Appellate Tribunal has directed the Petitioners to deposit a sum of Rs. 40 lakhs by 19 December 2022 failing which the appeal would be dismissed without further reference to the Tribunal.

3. The learned Counsel for the Petitioners submitted that the Petitioners had filed an additional affidavit/ misc. application bringing certain facts on record which do not find reference in the impugned order and therefore, an opportunity be given to the Petitioners before the Appellate Tribunal before concluding the issue. The learned Counsel for the Respondent – Bank states that the Appellate Tribunal has taken a considered decision and has infact shown indulgence of directing only to deposit of Rs. 40 lakhs. The learned Counsel states that the secured asset, a residential flat, was sold in an auction and the auction purchasers are put in possession. The auction purchasers, who are present in person, state that they had paid dues of the Petitioners towards maintenance, which is more than Rs. 2 lakhs and they are paying maintenance at the rate of Rs. 15,000/- per quarter to the housing society.

4. We have considered the facts and circumstances of the case. The Petitioners' secured asset has already been sold in an auction and the auction purchasers have paid the amount to the

Respondent- Bank. The case of the Respondent – Bank is a shortfall. Additional affidavit thus states that an amount of Rs. 59 lakhs be considered along with the fact that Rs. 2 Crores 6 lakhs as recovered by the Bank and thereupon the amount of 25% should be considered. According to the Petitioners, if this amount has considered, it will fulfill criteria of 25%.

5. Perusal of the impugned order demonstrates that argument of the Petitioners has been considered as admitting to deposit 25%, when it was the argument of the Petitioners that if the amount is recovered by the Bank is already considered, it will fulfill the condition of 25% and deposit amount is not necessary. The impugned order states that on 20 December 2022, the matter is listed for reporting compliance and no argument will be advanced.

6. Considering these facts to balance equities, we pass the following order : This part of the order is conditional upon the Petitioners paying an amount of Rs. 6 lakhs to the auction purchasers/ Respondent Nos. 2 to 4 within three working days. This amount is towards past maintenance charges and if these amounts are paid and receipt thereof is placed before the Debt Recovery Appellate Tribunal by the Petitioners then the Appellate Tribunal on 20 December 2022 will give hearing to the Petitioners and the Respondent -Bank as regards the contention raised in the miscellaneous application / additional affidavit and then proceed to

pass an appropriate order as per law.

7. The findings referred in the order dated 17 October 2022 be considered as a *prima facie* finding.

8. The writ petition is accordingly disposed of in above terms.

(GAURI GODSE, J.) **(NITIN JAMDAR, J.)**