

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1134 OF 2022

Kiran P. Chhajed, proprietor of
Suyash Properties ...Petitioner

V/s.
India SME Asset Reconstruction
Co. & Ors. ...Respondents

Mr. Pradeep Samant for the petitioner.
Mr. Vivek S. Sawant for respondent no. 1.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 8, 2022

P.C.:

1. This writ petition is directed against the judgment and order dated 26th July 2021 passed by the Presiding Officer, Debts Recovery Tribunal – 1, Mumbai (hereafter “DRT-1”, for short) in Transfer Original Application No. 507 of 2016. The operative part of the order reads as follows:

“(a) I allow the O.A. and direct the defendant nos. 1 to 4 to pay jointly and severally within a period of 30 days to the applicant bank a sum of Rs.56,21,208.24/- (Rupees Fifty-Six Lakh Twenty-One Thousand Two Hundred Eight and Twenty-Four Paise only) towards term loan facility with further interest @ 17.50% p.a. from the date of filing of the Original Application till its realization.
(b) Failing which the aforesaid amount shall be recovered from the properties which were mentioned in the O.A. and also from the sale of asset of defendant nos. 1 to 4.

(c) Defendants are hereby directed not to deal with their properties, till further direction of Ld. Recovery Officer.

(d) The defendant nos. 1 to 4 also shall pay costs incurred by the applicant bank in filing the present Original Application including professional fees and other expenses.

(e) The Recovery Certificate be issued forthwith and be sent to the Recovery Officer, Mumbai of this Tribunal."

2. The petitioner, an auction purchaser of a property put up for sale by the applicant before the DRT-1, was the respondent no. 4 in Transfer Original Application No. 507 of 2016. Erroneously, the Presiding Officer has referred to the petitioner (defendant no. 4) as a borrower who is liable to pay along with the defendant nos. 1, 2 and 3 the sum as indicated in paragraph (a) of the operative direction extracted above. In terms of operative direction (b), the petitioner has also been included along with the defendant nos. 1 to 3 from whom the amount due is liable to be recovered if not paid within thirty (30) days.

3. Mr. Vivek Sawant, learned advocate appearing for the respondent no. 1 fairly concedes that reference to the petitioner as one of the borrowers along with the defendant nos. 1 to 3 by the Presiding Officer is erroneous. In fact, he submits that an application has been filed by the respondent no. 1 before the DRT-1 for rectification of the inappropriate references to the defendant no. 4, i.e., the petitioner, as a borrower. Such application is reportedly pending.

4. Be that as it may, it is also not in dispute that the petitioner has moved the Debts Recovery Appellate Tribunal, Mumbai (hereafter "DRAT, Mumbai", for short) challenging the

self-same judgment and order dated 26th July 2021. Mr. Pradeep Samant, learned advocate for the petitioner submits that since there is a vacancy in the office of the Chairperson of the DRAT, Mumbai, the petitioner had no other option but to institute this writ petition on 23rd December 2021, seeking quashing of the impugned judgment and order as well as for other reliefs.

5. In course of hearing of a different matter, we have been informed that 20th March 2022 is the last date for Justice Ashok Menon, former Judge of the Kerala High Court, to join as the Chairperson of the DRAT, Mumbai. Having regard thereto, we are not inclined to proceed with hearing of this writ petition which is being pursued as a parallel remedy.

6. Mr. Pradeep Samant has contended that in view of the predicament which the petitioner faces of having his assets sold off, although he is an auction purchaser only and, therefore, not liable for any sum payable to the respondent no. 1, certain interim protection ought to be granted.

7. Having heard learned advocates for the parties, we dispose of the writ petition granting liberty to the petitioner to urge all points for having the judgment and order dated 26th July 2021 set aside by the DRAT, Mumbai. No opinion is expressed on merits and all contentions are left open.

8. However, till such time the Presiding Officer passes an appropriate order on the application filed by the respondent no. 1 or the DRAT, Mumbai passes an appropriate order in the appeal filed by the petitioner, the operative directions extracted above shall not be applicable *qua* the petitioner. It is also directed that the property put up for sale and purchased

by the petitioner shall not either be put up for sale once again or be dealt with in any manner by the Recovery Officer till such time the Presiding Officer, DRT-1/the Chairperson, DRAT, Mumbai passes an appropriate order in that behalf in proceedings initiated by the respondent no. 1 and the petitioner, respectively, before them.

9. There shall be no order as to costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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