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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3653 OF 2021**

Canara Bank, Asset Recovery
Management Branch – II.

..Petitioner

VS.

Mitexco & 4 ors.

..Respondents

Dr. Birendra Saraf, Senior Advocate a/w. Ms. Vaishali Bhilare
for petitioner.

Mr. Charles De'Souza a/w. Ms. Sonali Jain for respondent
nos.1 to 4.

Mr. Sidharth Samantaray a/w. Mr. Vinod Kothari i/b. M/s.
Apex Law Partners for respondent no.5.

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

DATE : JANUARY 13, 2022.

P.C. :

1. This writ petition, at the instance of a secured creditor, is directed against the orders dated December 3, 2019 and December 10, 2019 passed by the Debts Recovery Appellate Tribunal, Mumbai [hereafter 'DRAT (M)' for short].

2. The first order dated December 3, 2019 was passed on M.A. No. 799 of 2019 in Appeal No. 92 of 2019. The Chairperson of the DRAT (M) permitted the appellants (respondents 1 to 4 herein) to deposit 50% of Rs.87,34,962/-, i.e., Rs.43,67,481/- by December 9, 2019 towards pre-deposit with the Registrar, DRAT (M), failing which the appeal would stand dismissed automatically. It is

not in dispute that the appellants before the DRAT (M) having made the requisite deposit, the same has been invested in a term deposit as directed in such order. The appeal was listed on December 10, 2019 for reporting compliance of the order dated December 3, 2019. Since the order dated December 3, 2019 stood complied with, the Chairperson proceeded to consider M.A. No. 798 of 2019 filed in Appeal No. 92 of 2019. The contentions raised in the appeal and the application having been found to be identical, the Chairperson was of the view that the appeal should be taken up for final hearing on December 30, 2019 and it was ordered accordingly. An interim order was, however, passed granting liberty to the secured creditor to proceed with the sale of the secured asset which was scheduled on that day but the secured creditor was restrained from confirming the sale in favour of the purchaser until further orders.

3. In the sale that ensued, the respondent no.5 became successful. He has since deposited the full amount of sale value amounting to Rs.5,00,65,000/-. However, Appeal No. 92 of 2019 could not be heard on the returnable date and has remained pending on the file of the DRAT (M) till date with the result that the respondent no.5 has been disabled to obtain delivery of possession of the secured asset and to complete the formalities for transfer thereof in his name.

4. While matters stood thus, the respondent no.5 applied on June 7, 2021 in T.R.P. No.758 of 2016 before the

Recovery Officer attached to the Debts Recovery Tribunal – 1, Mumbai (hereafter 'DRT-1 (M)' for short) seeking *inter alia* the following relief:

“(a) Hon’ble tribunal be pleased to retain 10% of the sale consideration as earnest money and return the balance 90% of the sale consideration alongwith interest thereon to the Applicant herein, in which case the Applicant agree and undertake to bring back the balance sale consideration as and when the stay on confirmation of sale granted by the Hon’ble Debts Recovery Appellate Tribunal is vacated;

(b) Without prejudice and in the alternative to the above prayer (a) the Hon’ble Tribunal be pleased to set aside the sale and refund the entire sale consideration deposited by the Applicant with interest thereon and poundage fees paid by the Applicant herein to the Applicant.”

5. The Recovery Officer has proceeded with hearing of such application and has posted it 'for orders' tomorrow. This triggered the request for circulation of this writ petition by the secured creditor, who now seeks urgent relief so that the application of the respondent no.5 is not disposed of prior to Appeal No. 92 of 2019 being considered and decided by the Chairperson, DRAT (M). Judicial notice is taken of the vacancy in the office of the Chairperson, DRAT (M). It is common ground that final hearing of Appeal No. 92 of 2019 may not be possible in the immediate future.

6. Appearing in support of this writ petition, Dr. Saraf, learned senior counsel has expressed apprehension that if the application of the respondent no.5 is allowed by the

Recovery Officer, the entire process undertaken by the secured creditor for sale of the secured asset would fall through and, therefore, in the interest of justice, the Recovery Officer should be directed to stay his hands till such time the appeal is decided by the DRAT (M).

7. Mr. Samantaray, learned counsel appearing on behalf of the respondent no.5, has opposed the prayer made by Dr. Saraf. According to Mr. Samantaray, the respondent no.5 had participated in the process of sale of the secured asset which is a property in the same building where the respondent no.5 resides and such property was sought to be acquired having regard to the needs of his expanding family. He submits that it has been more than two years that the hard-earned money of the respondent no.5 has been stuck and his plans impeded; and in view of the *inter se* disputes between the secured creditor and the respondents 1 to 4, it is the respondent no.5 who has been rendered a victim of the circumstances.

8. We have heard Dr. Saraf, Mr. Samantaray as well as Mr. De'Souza, learned counsel appearing for the respondents 1 to 4 at substantial length and are of the considered opinion that this writ petition, as well as the appeal pending before the DRAT (M), need not be kept pending any further and the same may be disposed of by issuing appropriate directions.

9. The appeal before the DRAT (M) was carried by the respondents 1 to 4 from an order dated October 30, 2019 passed by the Presiding Officer, DRT-1 (M). Such order was made in Interlocutory Application No.805 of 2019 in Appeal (L) No. 727 of 2019, being an appeal under sub-section (1) of Section 30 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The relief prayed for in the application was for waiver of the mandatory pre-deposit. Having regard to the failure and/or omission of the respondents 1 to 4 to comply with an order passed by the Supreme Court on October 11, 2017, while disposing of Special Leave to Appeal (C) No (s). 516-517/2015 instituted by such respondents, the Presiding Officer declined to grant waiver of mandatory pre-deposit and thereby refused ad-interim relief to the appellants before him. This order was carried in appeal by the respondents 1 to 4 before the DRAT (M), giving rise to Appeal No. 92 of 2019. However, as noticed above, in the course of hearing of Appeal No. 92 of 2019, the appellants/respondents 1 to 4 have deposited 50% of Rs.87,34,962/-, which comes to Rs.43,67,481/-. In view of the deposit made by the appellants/respondents 1 to 4 as above, the question of pre-deposit for entertaining Appeal (L) No. 727 of 2019 loses much of its significance. We direct that such deposit should be treated as mandatory pre-deposit for making Appeal (L) No. 727 of 2019, preferred against the order of the Recovery Officer dated

October 10, 2019, ready for hearing before the Presiding Officer, DRT-1 (M) and shall be subject to the decision in such appeal. We request the Presiding Officer, DRT-1 (M) to make honest endeavour to decide Appeal (L) No. 727 of 2019 in accordance with law as early as possible, preferably within three weeks of receipt of an authenticated copy of this order. Should the Presiding Officer find it difficult to decide the said appeal within three weeks, the same may be decided by a further week thereafter but not beyond. Till such time Appeal (L) No. 727 of 2019 is finally decided by the Presiding Officer, DRT-1 (M) in terms of this order, the Recovery Officer, who is in seisin of the application of the respondent no.5 dated June 7, 2021, shall stay his hands. The order of restraint passed by the DRAT (M) with regard to confirmation of sale shall also continue to operate till Appeal (L) No. 727 of 2019 is finally decided.

10. In view of this order, nothing would survive for decision in Appeal No. 92 of 2019 before the DRAT (M); hence, the same would stand disposed of. The Registrar of the DRAT (M) will proceed accordingly to treat the appeal as closed.

11. We, however, direct the Presiding Officer of DRT-I (M) to decide Appeal (L) No. 727 of 2019 without being influenced by any observations made by the Chairperson, DRAT (M) in the order dated December 3, 2019 with regard to determination of the amount of pre-deposit, since paid by the appellants/respondents 1 to 4. Needless to observe,

Appeal (L) No. 727 of 2019 shall be decided on its own merits.

12. We leave it open to the parties to take further steps in accordance with law depending on the order to be passed by the Presiding Officer, DRT-1 (M) in Appeal (L) No. 727 of 2019.

13. With the aforesaid directions, this writ petition is disposed of. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)