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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.213 OF 2020

VIJAY KUMAR FADKE AND 2 ORS. ... Petitioners.

Versus

BANK OF BARODA ... Respondent.

Mr. Bhargav Samant h/f Mr. Rohan Desai, Advocate for the Petitioners.

Mr. G. Agni with Mr. G. Rege, Advocate for the Respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 16 February, 2023

ORAL ORDER:

Heard Mr. Bhargav Samant holding for Mr. Rohan Desai, learned Counsel for the Petitioners and Mr. G. Agni appearing with Mr. G. Rege, learned Counsel for the Respondent.

2. On 21.09.2022, this Court passed the following order:-

“1. Learned Counsel for the petitioner, on instructions from the petitioner, who is present in the Court states that the petitioner would like to bring about settlement by depositing the entire amount due and payable to the respondent, which is an amount of ₹10,10,646/- by 31 October 2022.

2. If that be so, let the bonafides be shown by the petitioner by depositing atleast 50% of the above stated amount within one week from today so that the parties can enter into consent terms.

3. The petitioner also undertakes to deposit with the respondent the balance 50% of the amount on or before 31 October 2022.

4. It is clarified that till the parties enter into consent terms, the above statements are without prejudice to the rights and contentions of the respondent that the Petition itself would not be maintainable.

5. Stand over to 28.09.2022, High on Board.”

3. Since such undertaking given to the Court was not complied with, separate order was passed on 28.09.2022 which reads thus:-

“1. Stand over to 10 November 2022.

2. In pursuance of the order dated 21 September 2022, learned Counsel for the petitioner states that his client has handed over a cheque to him to be deposited with the Registry of this Court which is of an amount of 50% of the total amount of Rs.10,10,646/- as payable to the respondent.

3. Leave granted to deposit such cheque. The balance amount needs to be deposited by the petitioner on or before 31 October 2022 as already observed in the said order. Accordingly, list the present proceedings on 10 November 2022.

4. In the meantime, parties may proceed with finalising the consent terms so that the same be presented before the Court on the next date of hearing. Appropriate orders for withdrawal of the amount will be passed on the next adjourned date of hearing.”

4. On 07.10.2022, Petitioner deposited an amount of ₹5,00,000/- in this Court. However, note of the Registry shows that the remaining balance which the Petitioner was supposed to deposit on or before 31.10.2022 was not deposited.

5. On 01.02.2023, this Court passed the following order:-

“1. In the above Writ Petition, an Order was passed on 28.09.2022, wherein it was recorded that the Petitioners shall deposit with the Registry of this Court 50% of the total amount of Rs.10,10,646/- (Rupees Ten Lakhs Ten Thousand Six Hundred and Forty Six Only) payable to the Respondent-Bank. The balance 50% was to be deposited on or before 31.10.2022.

2. The matter had thereafter not reached and has been called out for the first time today. Today, the learned Counsel appearing on behalf of the Petitioners stated that the cheque deposited with the Registry towards the 50% of Rs.10,10,646/- (Rupees Ten Lakhs Ten Thousand Six Hundred and Forty Six Only), has been dishonoured. He stated that, however, he has brought a Demand Draft of a sum of Rs. 5 lakhs, which will be deposited in the Registry by tomorrow and the Respondent is at liberty to withdraw the said amount. He submitted that because of this delay, his client is willing to pay interest and accordingly has stated that the total amount that he would pay to the Respondent-Bank would be now a sum of Rs.11 lakhs instead of Rs.10,10,646/- (Rupees Ten Lakhs Ten Thousand Six Hundred and Forty Six Only). He has further stated, on instructions, that the balance payment of Rs.6 lakhs shall be paid directly to the Respondent-Bank on or before 15.02.2023.

3. Purely out of indulgence, one last opportunity is granted to the Petitioner. It is accordingly directed that the Petitioners shall deposit the Demand Draft of Rs. 5 Lakhs in the Registry of this Court by tomorrow. The Respondent-Bank is at liberty to withdraw the said amount of Rs.5 lakhs deposited by the Petitioners. The balance amount of Rs.6 lakhs payable to the Respondent-Bank, shall be paid by the Petitioners directly to the Respondent-Bank on or before 15.02.2023.

4. It is made clear that no further indulgence shall be shown to the Petitioners in this regard.

5. Place the above Writ Petition for compliance on 16.02.2023 on the supplementary board.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act

on production by fax or email of a digitally signed copy of this order.”

6. The learned Counsel for the Petitioner would submit that the Petitioner is unable to deposit balance amount of ₹6,00,000/- as undertaken on the earlier occasions.

7. Mr. Agni disclosed that as per the bank records, balance amount of ₹6,00,000/- is not deposited on or before 15.02.2023.

8. It clearly goes to show that the Petitioner, though promised this Court to deposit the entire amount, failed to comply with such undertaking.

9. Even otherwise, the maintainability of the petition was kept open as the prayers in the present petition is to grant a writ in the nature of certiorari for an order directing to set aside the order of Debt Recovery Tribunal dated 27.11.2019 in proceedings No.APPEAL (L) No.772/2019 and consequently stay the attachment of property as per the letter dated 18.11.2019.

10. The Petitioner is also challenging the order dated 27.11.2019 by which application for stay filed before the Debt Recovery Tribunal was rejected on the ground that he failed to deposit the amount of debt due along with the appeal memo.

11. Proceedings against the Petitioner are under the SARFAESI Act and if the Petitioner is feeling aggrieved by such order passed by the Debt Recovery Tribunal, there is provision for filing of appeal before the Appellate Tribunal .

12. It is now well settled that under the extraordinary jurisdiction of this Court, such proceedings where the alternate efficacious remedy is available, should not be entertained.

13. Even otherwise, the Petitioner has failed to deposit the amount as directed and agreed before this Court.

14. Having said so, there is no substance in the present petition. The petition stands disposed. The Respondent Bank is entitled to withdraw the amount of ₹5,00,000/- which the Petitioner has deposited before this Court. Parties to bear their own cost.

BHARAT P. DESHPANDE, J.