IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1859 OF 2023

Warana Industries Limited and ors. … Petitioners

V/s.

Apna Sahakari Bank Limited and ors. … Respondents

Mr.Surel Shah with Mr.Vivek Patil, Mr.Devesh Sawant and Mr.Nitiraj Shirke i/by M/s Vivek Patil & Associates, Advocates for the Petitioners.
Mr.Charles D'Souza with Mr.Apoorva Kulkarni i/by M/s V.Deshpande and Co., Advocates for Respondents No.2 and 3.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 16 FEBRUARY 2023.

P.C.:-

1. The Petitioner No.1 is a borrower and the other Petitioners are guarantors-directors. They seek to question the steps taken by Respondent No.1- the secured creditor under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act").

2. The learned counsel for the Petitioner contends that under section 31(1) of the SARFAESI Act the Respondent-Bank could not have proceeded against the agricultural land. The learned counsel for

the Respondents submit that the Petitioners have remedy to approach the DRT and even this contention, if it has merits can be passed before the Tribunal.

3. We also agree with the submission of the Respondent Bank that the Petitioner's argument of embargo on the secured creditor is ground to question the action taken by the secured creditor. Nothing is shown to us that the DRT is precluded from examining this ground and if it is found to be correct to set aside the action of the secured creditor. There is difference between the power of the secured creditor under the provisions of law and the jurisdiction of the DRT. If the Petitioner is able to demonstrate that the action of secured creditor is bad in law, the DRT can always pass necessary orders. That being the position, we are not inclined to examine the writ jurisdiction. In catena of decisions, the Hon'ble Supreme Court has laid down that the remedy to question the action taken by the secured creditor as against the borrower and guarantors under the SARFAESI Act is to the Debt Recovery Tribunal (for short "DRT") and the SARFAESI Act being a complete Code, the High Court should relegate the parties to this remedy.

4. As regards the prayer of the Petitioner regarding the one-time settlement is concerned, it is not possible for us to issue a Writ of Mandamus to the Respondent-Bank. It is open to the Petitioners to approach the Respondent-Bank for a settlement and it is for the Bank to accept the same amount.

5. Keeping all contentions of the parties open in case the Petitioners approach the Debt Recovery Tribunal, the Writ Petition is disposed of.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

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