

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1540 OF 2023

Mr. Dharmesh S. Jain)...Petitioner

V/s.

The State of Maharashtra and Others)...Respondents

Mr. Simil Purohit i/b. Mr. Sumit Kothari, Advocate for the
Petitioner.

Mrs. Shruti D. Vyas, "B" Panel Counsel, for the Respondent
No.1-State.

Mr. Venkatesh Dhond, Senior Advocate, a/w. Mr. Amir
Arsiwala, Mr. Archit Virmani, Ms. Nupur Shah and Ms. Sanjana
Salvi, Advocate for Respondent No.3.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE : 8 FEBRUARY 2023

P.C.

Heard learned Counsel for the parties.

2 The Petitioner is before us making a grievance that inspite of the moratorium in favour of the Petitioner, the Respondent – secured creditor is proceeding to take action and has taken action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

3 It is settled through a series of decisions of Hon'ble Supreme Court that SARFAESI Act is a complete code in itself and the remedy should be resorted to as provided under the Act. Infact the Petitioner has already approached the Debt Recovery Tribunal by way of an application being Interim Application (Diary) No.181 of 2023 in Securitisation Application (Diary) No.194 of 2022 filed by the borrower. The learned Counsel for the Petitioner states that the Debt Recovery Tribunal has orally informed the Petitioner that the consequences would follow if Respondent-secured creditor takes action and nothing further is taking place.

4 We do not find any order passed by the Debt Recovery Tribunal in the application filed by the Petitioner, and therefore, we cannot go by an oral statement stated to have been made by the Tribunal.

5 Considering the fact that the Petitioner is seeking restoration, the only indulgence that we grant in this Petition is that the Debt Recovery Tribunal, subject to time constraints, would consider taking up the application of the Petitioner on an early date and if it is feasible to do so, pass an order upon the application within a period of two weeks.

6 By this order we deem to have not expressed any opinion on the merits of the case.

7 Writ petition is accordingly disposed of in above terms.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)