

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2428 OF 2023

Deepak Shah and Anr. ... Petitioners
vs.
LIC Housing Finance Limited ... Respondent

Mr. Shreyas Shrivastava with Mr. Yogesh Devnani for Petitioners.
Mr. Sanjeev Sawant with Mr. B. K. Barve, Mr. sandeep Barve and Mr.
Vijay Hamare i/b B. K. Barve & Co. for Respondent.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 19 APRIL 2023

P.C. :

. Heard learned Counsel for the parties. Taken for disposal.

2 The Petitioner has challenged the order passed by the Debt Recovery Tribunal, DRT-III dated 20 February 2023 refusing to grant any interim order in favour of the Petitioner.

3 Learned Counsel for the Respondents takes a preliminary objection that the Petitioner has a remedy of filing an appeal before the Debt Recovery Appellate Tribunal. Learned Counsel for the Respondents has also relied upon the decision of the Division Bench of this Court in the case of *Asrec (India) Ltd. Vs. Fastgrowth*

*Hospitality LLP and Ors.*¹ to contend that even on merits of the case merely because a technical issue is raised, does not mean that the Tribunal can automatically grant interim order without considering the possibility of deposit of the dues if there is not a serious dispute regarding the same.

3 Learned Counsel for the Petitioner contended that the Petitioner was in fact ready to deposit an amount of Rs. 1 crore and the same was not considered by the Tribunal on the ground that mere assurance to deposit the amount within one week cannot be accepted. Learned Counsel submitted that the Petitioner was ready and is ready to deposit the amount of Rs. 1 crore. Affidavit to that effect sworn by Mr. Deepak Ambalal Shah and Mrs. Achala Deepak Shah is tendered, which reads thus:-

"2. We state that, we had given an oral undertaking, through our Counsel, for depositing Rs. 1,00,00,000/- (Rupees One Core Only) within a period of 15 days from the filing of the present affidavit i.e. on or before 04/05/2023.

3. In pursuance to the oral undertaking given by our Counsel during the course of hearing on 18/04/2023, we hereby give a written declaration by way of the present affidavit that we the Petitioners abovenamed/deponents undertake to deposit Rs. 1,00,00,000/- (Rupees One Crore Only) within the period of 15 days i.e. on or before 04/05/2023.

4. We state that, we are fully aware of the purpose of filing the present affidavit and there is no force or coercion in the signing of this affidavit."

¹ WPL 39107 of 2022 dated 18 January 2023

Learned Counsel for the Petitioner contends that in light of this position, the Tribunal may be directed to reconsider the application made for interim order. It is not disputed before us that the possession is taken from the Petitioner on 20 February 2023.

4 We have considered the rival contentions of the parties. As regards the deposit of the amount as a condition for grant of any interim order as per the law laid down in the case of *Asrec (India) Ltd. Vs. Fastgrowth Hospitality LLP and Ors. (supra)* by this Court, we find no reasons in the impugned order as to why the deposit volunteered to be made by the Petitioner was not to be considered. To that extent the impugned order therefore is un-reasoned. According to us, in light of these facts when the Petitioner has volunteered to deposit the amount of Rs. 1 crore and that Petitioner has lost the possession, the Petitioner be given a liberty to file a fresh application on its own merits, keeping in mind the deposit to be made by the Petitioner would be considered as one of the criteria for consideration of the application along with other contentions of both the parties. As to the final outcome of this application we leave it to the Tribunal to take it as per the law. Needless to state that this order and the liberty will come in effect only after the Petitioner made the said deposit in the Debt Recovery Tribunal.

5 Accordingly, impugned order dated 20 February 2023 is quashed and set aside with liberty to the Petitioner to file a fresh

application for interim relief in light of the subsequent developments and the deposit made. Writ Petition is accordingly disposed of.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
2023.04.20
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