

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3291 OF 2023

Rupesh Nandkumar Nadkar & Anr.)...Petitioners

V/s.

IDBI Bank Ltd. And Another)...Respondents

Mr. Rajesh Shethia, Mr. Chetan Shah, Ms.Chetna Dharod,
Advocate for the Petitioners.

Mrs. Shruti D. Vyas, 'B' Panel Counsel for the Respondent
No.3-State.

Mr.A.K.Mishra a/w. Mr. Siddharth Kakka i/b. Orbit Law
Services, Advocate for the Respondent No.1.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 27 MARCH 2023

P.C.

Heard the learned Counsel for the parties.

2 Considering the order that is proposed to be passed, the presence of Respondent no.1 i.e. the secured creditor would suffice and it is not necessary to issue notice to Respondents

no.2 and 3 – the original borrower and the State of Maharashtra.

3 The Petitioners have challenged the order passed by the Debt Recovery Tribunal (DRT) in Appeal No.5 of 2022 on 20 February 2023 rejecting the application for stay in the Appeal and adjourning the Appeal to 10 August 2023.

4 The learned Counsel for the Petitioners states that property was purchased subsequent to the agreement by the original borrower with the bank and the DRT recorded this and rejected the stay. According to the Petitioners, the Petitioners have various other grounds to urge and have also pleaded fraud.

5 Be that as it may, we do not find the reasoning in the impugned order satisfactory, more particularly, since not granting interim order would make the Appeal infructuous and Petitioners would be dispossessed. The order rejecting interim relief should have contained details or that the Appeal should have been disposed of so that the Petitioners would have remedy of substantive Appeal before the Appellate Authority. In these circumstances, both the parties have been prejudiced.

6 According to us, the appropriate course of action would be to direct the DRT to hear the Appeal in a time bound period and protect the Petitioners in the meanwhile. The parties are ad-idem that the Petitioner is currently in possession of the premises.

7 Accordingly, the impugned order dated 20 February 2023 is quashed and set aside. The Appeal no.5 of 2022 be disposed of by the DRT within a period of four weeks from the date of order of this Court reaches it.

8 Till the order is so passed by the DRT, possession of the Petitioners be protected on a condition that the Petitioners will not create third party rights or part with possession.

9 We make it clear that the protection is in above circumstances and shall not be considered as reflection of merits of the rival contentions and the Appeal will be decided on its own merits.

10 The Writ Petition is disposed of. Interim Application, if any, stands disposed of.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)