

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

TRUPTI
SADANAND
BAMNE

WRIT PETITION NO. 3418 OF 2023

Ramadevi R. Prajapati ... Petitioner

versus

IDFC First Bank Ltd. & Ors. ... Respondents

.....

Mr. Minesh K. Shah for the Petitioner.

Mr. R.L. Motwani for the Respondents.

.....

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

DATE : 21 APRIL 2023

P.C.:

Heard the learned Counsel for the parties.

2. By this petition, the Petitioner has challenged the order dated 20 February 2023 passed by the Debt Recovery Appellate Tribunal (DRAT), Mumbai whereby the DRAT has refused the prayer of the Petitioner to reduce the mandatory pre-deposit from 50% to 25%.

3. The Petitioner is the wife of Respondent No.3 and the mother of Respondent No.2. According to the Petitioner, Respondent No.1 and her husband- Respondent No. 3 are the owners and Respondent No.2, because of his bad habit, has created a situation which has led to fraudulent claim by Respondent No.1- Bank. The learned

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Counsel for the Petitioner submits that in the facts of the case, there were good and cogent grounds for exercise of discretion to reduce pre-deposit to 25%, yet the learned DRAT has refused to grant the relief.

4. The challenge to the exercise of this discretion cannot be treated as an appeal and will have to be considered within the well defined parameters of the writ jurisdiction. We have gone through the impugned order. The order gives reasons why pre-deposit cannot be reduced to 25%. The learned Counsel for the Petitioner states that a thumb impression on the sanction letter is not of the Petitioner and the matter should be sent to the handwriting expert and accepting this as a case of fraud, waiver of 25% should have been granted. The learned Counsel for the Petitioner states that the manner in which the Respondent/ Secured Creditor has proceeded gives rise to various challenges which have been noted by the learned DRAT, however, not considered. The learned Counsel for the Respondents, on the other hand, submits that under the guise of refusing the relief, the DRAT in fact has granted relief of postponement of possession till further orders without there being compliance with a direction to deposit which cannot be done, and in fact, the Petitioner has benefited from the order. The learned Counsel submits that there is no fraud at all.

5. Even though, the learned Counsel for the Petitioner has argued the matter on merits as regards the fraud, we will have to keep in mind that consequences that may ensue if we give conclusive finding of fraud against the Petitioner. It is not argued before us that Respondent Nos. 2 and 3 have also not signed this document. Nothing is shown to us as to why Respondent Nos. 2 and 3, the son and husband of the Petitioner, should deceive the Petitioner when the Petitioner has stated to give her thumb impression along with the other Respondents on the same document. Considering the relationship between the parties, we find no reason to interfere in the discretion exercised by the DRAT. The writ petition is accordingly rejected. The interim order stands vacated.

ABHAY AHUJA, J.

NITIN JAMDAR, J.