

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3523 OF 2023

Nitin Eknath Pawar)...Petitioner

V/s.

State of Maharashtra and Others)...Respondents

Ms. Dimple Tejani, Advocate for the Petitioner.

Ms. Shruti D. Vyas, 'B' Panel Counsel for the Respondent No.1.

Mr. Aayush Kothari i/b. Ms. Sanjana Ghogare, Advocate for the Respondent No.2.

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

DATE : 18 APRIL 2023

P.C.

Being aggrieved by the order dated 22 February 2023 passed by the Debt Recovery Appellate Tribunal ('DRAT') rejecting Petitioner's Miscellaneous Appeal in view of non-compliance of pre-deposit under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), Petitioner has filed this Petition for the following reliefs :

“(a) That this Hon’ble Court be pleased to admit the present Petition;

(b) That this Hon’ble Court be pleased to go through the papers and proceedings in Misc. Appeal (Diary) No. 35 of 2022 before the Learned Chairperson, DRAT, Mumbai and after going the propriety and legality of the Order dated 22.02.2023 passed by the Learned Chairperson, DRAT, Mumbai ought to have considered that, set aside the same and restore the Misc. Appeal at its original stage;

(c) That this Hon’ble Court be pleased to extend the time to deposit the amount of Rs.12,93,954.00 for further period of six weeks or as per time as this Hon’ble Court deem fit and proper.”

2. When this matter came up on 21 March 2023, the following order was passed :

“ Learned counsel for the Petitioner seeks extension for making the balance payment. He states that Petitioner is ready to file an affidavit that if the entire amount is not paid within a period of three weeks, he will hand over the possession of the property. Even for considering this prayer, Petitioner must show his bonafides. Learned counsel for the Petitioner states that Petitioner will deposit Rs.5,00,000/- by 24 March 2023. If such deposit is made, further course of action can be decided.

2. Stand over to 24 March 2023.”

3. On 24 March 2023, an affidavit and undertaking enclosing Demand Draft of Rs.5 Lakhs was filed by the Petitioner before the DRAT.

4. On 27 March 2023, Petitioner informed the Court that Rs.5 Lakhs have been deposited and the balance amount would be deposited within a period of three weeks and the matter was adjourned for compliance on 17 April 2023. The said order is quoted as under :

“ The learned Counsel for the Petitioner states that amount of Rs.5 lakhs is deposited and the balance amount would be deposited within a period of three weeks. To ensure compliance, hearing of this Petition is deferred to 17 April 2023. To be listed under the caption “For Directions”.

2 In view of the affidavit and the undertaking, the ad-interim relief granted earlier to continue till the next date.”

5. Today when the matter is called out, learned Counsel for the Petitioner submits that the Petitioner has deposited the balance amount also. Learned Counsel draws the attention of this Court to the Affidavit cum Compliance Report dated 15 April 2023 which indicates that a total amount of Rs.38,12,092/- being the conditional pre-deposit for hearing of the Appeal before the DRAT has been deposited by the

Petitioner in the DRAT. Mr. Aayush Kothari, learned Counsel for the Respondent no.2 bank confirms the same.

6. In view of the fact that the Petitioner has deposited the amount of pre-deposit, we restore the Miscellaneous Appeal (Diary) No.35 of 2022 and direct the DRAT to hear the Petitioner as expeditiously as possible, preferably within a period of three months, subject to earlier time bound matters.

7. Writ Petition stands allowed in the above terms. Parties to bear their own costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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