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

(A.S.) WRIT PETITION NO. 3697 OF 2023

Accord Mediplus Private Limited and Ors. ... Petitioners

V/s.

Union Bank of India and Ors. ... Respondents

with

(O.S.) WRIT PETITION (Lodg.) NO. 7818 OF 2023

Jagdish Jamaklal Mansukhani ... Petitioner

V/s.

Indiabulls Housing Finance Limited ... Respondents

Mr. Mayur Khandeparkar with Mr. Akshay Petkar with Mr. Abhishek Salian and Mr. Aniket Malu for the Petitioners in WP 3697/23

Mr. Nitin Thakkar, Senior Advocate with Mr. Atul Singh with Ms. Nikita Agrawal i/b. AVS Legal for the Petitioner in WP(L) 7818/23

Mr. Deepak Saxena with Mr. Jitendra Bakliwal i/b. Legal Prism for Respondents 1 and 2 in WP 3697/23

Mr. Shyam Dewani with Mr. Sumit Khanna i/b. Dewani & Associates for Respondent No.1 in WP(L) 7818/23

Mr. Anil Singh, ASG with Mr. Satyaprakash Sharma, Mr. Dhananjay Deshmukh for Respondents - DRT in both matters

Ms. Jyoti Chavan, AGP for the Respondent – State

Mr. P.W. Gorakh, Registrar – DRAT present

Mr. M.S. Ansari, Registrar – DRT-I present

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

DATE : 21 MARCH 2023

P.C.:-

These two Petitions arise from different facts, but they are taken up together because the reason why the Petitioners had to approach this Court is common. The reason is that the concerned Members of the Debts Recovery Tribunal were on leave to attend the Seminar without notifying any alternate arrangement, and both the Petitioners are facing the deadline and have no other remedy but to approach this Court.

2. In Writ Petition (L) No. 8056 of 2023 (now numbered as WP No. 3697 of 2023), the Petitioners were facing with the sale notice of the secured assets dated 20 February 2023 received on 24 February 2023, subsequent sale dated 10 March 2023 and sale confirmation of 14 March 2023. The Petitioners filed an application

before the Debts Recovery Tribunal, Pune, in respect of these actions taken by the Secured Creditor. As regard orders to be sought in the pending applications, the Petitioners could not apply in the pending application to the DRT because the notice was issued by the DRT, Pune informing all members of DRT, Bar and the litigants of the Districts that on account of the attending a Seminar held at Bhopal, the Presiding Officer is not available from 18 March 2023 to 24 March 2023.

3. In Writ Petition (Lodg.) No. 7818 of 2023, the Petitioner was aggrieved by the order dated 14 February 2023 passed by the Metropolitan Magistrate in Mumbai under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 and subsequent notice dated 2 March 2023, the Petitioner had filed the securitization application before the DRT-II, Mumbai. According to the Petitioner, the Petitioner sought interim order on the ground of directions issued by the National Company Law Tribunal (NCLT). However, there was confusion as regards the transfer of papers arising out of the change in the jurisdiction of the Tribunal. The grievance of the Petitioner was that the DRT was not sitting on 20 March 2023 to 24 March 2023 without making an alternate arrangement.

4. In light of the fact that not only these two petitions but other petitions were moved for urgent orders before us because of the unavailability of DRT members without notifying alternate arrangements, we were constrained to consider the matter with seriousness. The DRT must keep in mind the inherently time-sensitive nature of its jurisdiction, and filing a writ petition in the High Court cannot be considered a viable substitute when the members of the DRT do not function on working days without providing for an alternative arrangement.

5. We requested Mr. Anil Singh, the learned Additional Solicitor General, to assist the Court in looking into the issue. The learned ASG informed us that both Registrars of DRT Mumbai and DRT Pune are present in the Court. He confirmed that the Members of the Mumbai DRT and Pune DRT were on leave to attend a seminar, but also informed us that one DRT was functioning in Mumbai. The learned ASG also acknowledged that the notice issued did not inform the parties of any alternate arrangement. He further stated that general instructions were issued on 18 April 2022 regarding alternate arrangements in case of the unavailability of the Presiding Officer. However, the learned Counsel in Writ Petition (L) No. 8056 of 2023 pointed out that this arrangement would not work for DRT Pune as there is only one member. In response, the learned ASG informed us that the Registrar of DRAT Mumbai has

issued a notice today stating that the charge of DRT-II Mumbai, DRT-III Mumbai, DRT-Pune, DRT-Aurangabad, DRT-Nagpur, DRT-I Ahmedabad, and DRT-II Ahmedabad is entrusted to DRT-I Mumbai.

6. We take note that the notice regarding the charge of all the mentioned Debts Recovery Tribunals being entrusted to DRT-I, Mumbai, was issued only after we had raised the issue in WP 3697/23 yesterday. We find it concerning that all the officers of the mentioned DRTs have proceeded on leave simultaneously to attend the Seminar, leaving litigants seeking urgent relief with no other option but to approach the High Court, despite the law laid down by the Hon'ble Supreme Court in the case of *United Bank of India v/s. Satyawati Tondon*¹. The learned ASG assures us that the appropriate authorities will be informed and sensitized to ensure that such a situation does not recur. However, this is not an isolated instance, and earlier also, petitions were filed before us due to the unavailability of DRT Members without any alternate arrangement. In such cases, we suggest that the notice should provide an alternate arrangement, and the DRT Registry could explore the possibility of making an alternate forum available through Video Conferencing.

7. Now that the notice is issued regarding an alternate forum in DRT being available to the Petitioners, we are not inclined to examine the merits of the challenge.

¹ AIR 2020 SC 3413

8. As regards Writ Petition (L.) No. 8056 of 2023, we have passed an order on 20 March 2023 that we are not inclined to entertain the Writ Petition. We observe that if any auction takes place, the same will be subject to the pending application filed by the Petitioner. With these observations, this Writ Petition is disposed of.

9. As regards Writ Petition (L) No. 7818 of 2023 is concerned, the learned Counsel for the Respondent – Secured Creditor states that action would not be taken against the Petitioner till 28 March 2023. The learned Senior Advocate for the Petitioner states that there is an administrative problem regarding the transfer of papers. We expect that the same is sorted out by the DRT so that the appropriate order can be passed in the pending application of the Petitioner. This Writ Petition is also disposed of by recording a statement of the learned Counsel for the Respondent and observing as above.

ABHAY AHUJA, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date:
2023.03.24
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