

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3939 OF 2023  
WITH  
INTERIM APPLICATION NO. 4741 OF 2023

M/s. U Tech Agro Industries & Ors. ...Applicants/Petitioners  
Vs.

Dombivli Nagari Sahakari Bank Ltd. & Anr. ...Respondents

Mr. Rahul D. Motkari, for the Applicants/Petitioners.

Mr. Sanjay Anabhawane, for Respondent No.1.

CORAM : R.D. DHANUKA, CJ &  
G. S. KULKARNI, J.  
DATE : MAY 29, 2023

**PC.:**

1. The petitioners have impugned the order dated 15 March 2023 passed by the learned Chairperson, Debt Recovery Appellate Tribunal, Mumbai, (for short “**the appellate tribunal**”) on Interim Application bearing No.266 of 2022 (WoD) in Appeal on Diary No.555 of 2021, and prays that Interim application no.266 of 2022 be allowed and the appeal be entertained.

2. By the impugned interim order, the DRAT has granted stay to the impugned recovery of the amount of Rs. 2,70,28,184.81, which was inclusive of interest as on 31 October 2022, by directing the petitioners to deposit a sum of Rs.1.25 crores as a condition precedent for grant of stay. The petitioners having already deposited a sum of Rs.51 lakhs, the DRAT, accordingly, directed the petitioners to deposit an amount of

Rs.74 lakhs in two equal installments of Rs.37 lakhs each.

3. Being aggrieved by the said order of the DRAT, the petitioners have filed this Writ Petition. On 29 March 2023, after hearing both the parties, the Division Bench of this Court had recorded a statement made by the learned Counsel for the petitioners, on instructions, that the petitioners would deposit an amount of Rs. 11.50 lakhs by 19 April 2023 and Rs.62.50 by 31 May 2023 before the DRAT. The petitioners were also directed to file an affidavit to that effect within a period of four working days as also stating that no further extension would be sought. This Court thus modified such conditional order passed by the DRAT. We are informed by the learned Counsel for the petitioners that out of the amounts directed to be deposited by this Court by an order dated 29 March 2023, the petitioners have deposited Rs.11.50 lakhs by 19 April 2023. In so far as the balance amount of Rs.62.50 lakhs to be paid by 31 May 2023 is concerned, learned Counsel for the petitioners states that his clients would be unable to deposit the said amount of Rs.62.50 lakhs by 31 May 2023 and seeks minimum four months time to deposit the balance amount.

4. The next submission of the learned Counsel for the petitioners is that three properties are mortgaged by the petitioners with the respondents and if the respondents are directed to release the said properties as mentioned in paragraphs 19 to 21 of the Interim

Application, the petitioners would be able to deposit the balance amount as directed to be deposited by this Court.

5. It is not in dispute that the petitioners have filed an affidavit in pursuance of the order dated 29 March 2023 stating that no further extension to deposit the said amounts shall be sought for. In view of such affidavit filed by the petitioners, this Court had shown indulgence to the petitioners to deposit an amount of Rs. 74 lakhs by granting two installments in accordance with the statement made by the learned Counsel for the petitioners on instructions, before this Court.

6. In the above circumstances, we are not inclined to grant further extension to the petitioners to fulfill the condition of depositing the balance amount of Rs. 62.50 lakhs, for the reason that the request made by the petitioners is contrary to the order dated 29 March 2023 as also an affidavit to that effect has been filed by the petitioners in pursuance of the order dated 29 March 2023.

7. In so far as the submissions of the learned Counsel for the petitioners that the properties which are mortgaged with the respondents are required to be released, only then the petitioners would be able to comply with the order of depositing the balance amount, it is not in dispute that those properties as stated in the interim application, are already mortgaged with the respondents. Since, the terms and conditions imposed by the DRAT while granting stay of

recovery, as modified by the order passed by this Court, have not been complied by the petitioners, respondent No.1 would be entitled to proceed with the action to be initiated under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

8. It is, however, made clear that as and when the properties mortgaged in favour of the respondents are sought to be auctioned by respondent No.1, the same shall be by a private treaty at the first instance as per Rule 8 of the Security Interest (Enforcement) Rules, 2002. In view of Rule 8 of the Security Interest (Enforcement) Rules, 2002, a submission is now made by learned Counsel for the petitioners that when sale of the mortgaged property would be made, an opportunity be given to the petitioners to participate at the stage of the said sale by private treaty. It is open to the respondents to follow the procedure as admissible in law.

9. For the above reasons, we are not inclined to entertain the Writ Petition as well as the Interim Application.

10. Writ Petition as well as Interim Applications are rejected. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)