



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

**WRIT PETITION NO. 11577 OF 2023**

Mrs. Bhavandevi Ugamraj Jain And Ors.

...Petitioners

***Versus***

Bharat Cooperative Bank (Mumbai) Ltd.

...Respondent

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***Mr. Subhash Jha a/w Mr. Navneeta Krishnan T a/w.  
Linisha Seth i/by Law Global Advocates, Advocates for  
Petitioners.***

***Adv Aayush Kothari i/by Adv. Sanjana Ghogare,  
Advocates for Respondent.***

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**CORAM : B. P. COLABAWALLA &  
M.M. SATHAYE, JJ.**

**DATE : SEPTEMBER 12, 2023**

**P. C.**

**1.** The above Writ Petition is filed challenging the Order dated 25<sup>th</sup> August, 2023 passed by the Debt Recovery Tribunal-2, Mumbai (for short “**DRT**”). The secured asset which forms the subject matter of the present Writ Petition is Flat No. 403, A/A/1’ wing, Gangotri Sadan CHS Ltd, Bangur Nagar, Off. Link Road, Goregaon (West), Mumbai – 400 090. In relation to this secured asset, the Petitioners moved before the

DRT on an urgent basis, by filing a praecipe in Securitisation Application (L) No. 1430 of 2023. This was done because they received a notice of possession dated 31<sup>st</sup> August, 2023 in relation to Flat No. 403. The DRT heard the Petitioners' counsel and recorded that the Petitioners are not ready and willing to show their ability to pay the admitted liability. It therefore declined to take the matter out of turn and said it would come up in the usual course. It is being aggrieved by this order, that the present Writ Petition is filed.

**2.** Firstly, we are not inclined to entertain this petition because if the Petitioners are aggrieved by this order, they have an alternate remedy of filing an appeal before the DRAT under Section 18 of the SARFAESI Act, 2002. We further find that in the very same Securitisation Application, the matter was moved for seeking stay of taking over possession of another secured asset more particularly mentioned in the Order dated 31<sup>st</sup> July, 2023. The DRT declined granting any injunctive relief because it *inter alia* came to the conclusion that the Petitioners' submissions would mean that they want a blanket injunctive relief on a deposit/payment of a meager amount of Rs. 25,00,000/-. In the said Order it was recorded that no other argument was advanced by the Petitioners' counsel. The DRT also recorded the submissions of the

Petitioners' counsel that a sum of Rs. 1 Crore can be paid by selling 2 Galas which were mortgaged with the bank. Looking at these facts, the DRT held that the Petitioners have no money to pay, save and except the amount in the sum of Rs. 25,00,000/-. In these circumstances, the DRT refused any ad-interim relief. This Order dated 31<sup>st</sup> July, 2023 has not been challenged before any forum.

**3.** When one looks at the findings given by the DRT in its Order dated 31<sup>st</sup> July, 2023 [in S.A.(L) No. 1430 of 2023], it is clear that the impugned Order does not warrant any interference under Article 226 of the Constitution of India. We say this because it is quite clear that the Petitioners, who owe huge amounts to Respondent-Bank, are not in a position to deposit any substantial amount and are doing everything possible to thwart the SARFAESI proceedings initiated by the Respondent-Bank.

**4.** In these circumstances, we find no merit in the Writ Petition. Writ Petition is accordingly dismissed. Under normal circumstances, we would have awarded very heavy costs in the above matter. However, only because of the persuasive skills of Mr. Jha, we have refrained from doing so.

**5.** We must clarify that if the Petitioners prefer any Appeal from the order passed by the DRT [dated 25<sup>th</sup> August, 2023], the same shall be decided by the DRAT on its own merits and in accordance with law. The DRAT shall not be influenced by any observations made by us in this Order.

**6.** This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[ M.M. SATHAYE, J.]**

**[ B. P. COLABAWALLA, J.]**