
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13023 OF 2023

Rolex Jewells And Ors.

...Petitioners

Versus

M/s. Profectus Capital Pvt. Ltd.

...Respondent

Mr. Avinash Fatangare i/b. Ms. Archana Shellar, Ms. Kirti Purohit, Advocate for Petitioner.

Mr. Omar Khaiyam Shaikh i/b. Vikas Salvi & Associates, Advocate for Respondent.

Mr. Amanpreet Singh, Legal Manager of Respondent/Bank is present.

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

DATE : OCTOBER 31, 2023

P. C.

1. The above writ petition challenges the Order dated 25/09/2023 passed by the Debts Recovery Appellate Tribunal, Mumbai (for short “**DRAT**”) in Interim Application No. 651/2023. This Interim Application was filed for a waiver of deposit which is a condition precedent for entertaining the Appeal filed by the Petitioners herein. By

the impugned order, the DRAT directed the Petitioners herein to deposit a total amount of Rs.65 lakhs on or before 23/10/2023. This amount was to be deposited in two installments namely a sum of Rs.10 lakhs by 26/09/2023 and Rs.55 lakhs on or before 23/10/2023. The sum of Rs. 10 lakhs has been deposited within stipulated time and there is no dispute about the same. As far as the balance sum of Rs. 55 lakhs is concerned, the same has not been deposited by 23/10/2023 and the Appeal stands dismissed.

2. After we heard the matter for some time, the learned counsel appearing on behalf of the Petitioners as well as the learned counsel appearing on behalf of the Respondent-NBFC agreed that the Appeal filed by the Petitioners herein can be restored to file, on the Petitioners depositing in the DRAT an additional sum of Rs.20 lakhs within a period of 4 weeks from today. The Petitioners have further agreed that in the event they fail in the Appeal before the DRAT, the entire amount of Rs. 30 lakhs deposited by them in DRAT (namely the sum Rs.10 lakhs deposited by 26/09/2023 and the further sum of Rs.20 lakhs that would be deposited pursuant to this Order), shall be paid over to the Respondent-NBFC who will appropriate the said amount towards the dues payable by the Petitioners.

3. Considering this consensus, we direct that on deposit of a further sum of Rs.20 lakhs by the Petitioners with the DRAT on or before 28/11/2023, the Appeal filed by the Petitioners herein (Appeal on Diary No. 1682/2023) shall be restored to file and shall be heard on merits.

4 Needless to clarify that until 28/11/2023, no coercive steps shall be taken by the Respondent-NBFC for taking possession of the secured asset which forms the subject matter of Securitization Application No. 138/2023. If the amount of Rs. 20 lakhs is deposited as stipulated above, then no coercive steps shall be taken by the Respondent-NBFC till the disposal of the Appeal before the DRAT.

5. In the event the Petitioners fail to deposit Rs. 20 lakhs as stipulated above, the said Appeal of the Petitioners will be dismissed and the Respondent-NBFC shall be entitled to proceed in accordance with the law.

6. The Petitioners have also agreed that in the event the Appeal filed by them before the DRAT is dismissed/rejected for any reason whatsoever, then any amount deposited with the DRAT, along with accrued interest thereon, if any shall be paid over to the

Respondent-NBFC which shall be appropriated towards the outstanding dues of the Petitioners.

7. The above writ petition is disposed of in the aforesaid terms. There shall be no order as to costs.

8. 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.]