IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 646 OF 2023

Bank of Baroda and Anr. … Petitioners
vs.
Union of India and Anr. … Respondents

Mr. Nitin Thakkar, Senior Advocate with Mr. H. P. Kar and Mr. M. Adhikary i/b Interjuris for Petitioners.
Mr. Deepak Shukla for Respondent No.1 -UOI.
Mr. Siddharth Samantray with MR. T. N. Tripathi, Ms. Kalyani Wagle i/b T. N. Tripathi & Co. for Respondents No. 2 to 4.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 26 APRIL 2023

P.C. :

. Heard learned Counsel for the parties.

2. The Petitioner-Original Respondent in the appeal filed by the Respondent-Borrower, before the Debt Recovery Appellate Tribunal has challenged the order passed by the Debt Recovery Appellate Tribunal in Interim Application No. 121 of 2022 in Appeal No. 32 of 2022 dated 6 June 2022.

3. By this order passed in Application filed under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), the Debt Recovery Appellate Tribunal has directed the Respondent-

Borrower to deposit 25% of the amount due as a pre-deposit. According to the original Appellant the amount should have have been 50% as the mandate of law. According to the Respondent-Borrower the use of discretion is correct.

4. Considering the fact that the use of exercise under Section 18 of the SARFAESI Act has to be with reasons recorded as per the legislative mandate and since the impugned order does not record satisfactory reasons, we have put to the learned Counsel for parties whether the order to be set aside and the application can be considered afresh to be disposed of by giving reasons as mandatory under Section18(1). Learned Counsel for the parties are agreeable to this course of action.

5. Accordingly, without elaborating reasons, as it might affect the merits of the rival contentions, we set aside the impugned order dated 6 June 2022 and restore the application of the Respondent-Borrower to the file of the Debt Recovery Appellate Tribunal. The Debt Recovery Appellate Tribunal will decide the application after giving adequate reasons.

6. We make it clear that we have set aside the impugned order because sufficient reasons are not given and it should not be considered as reflection on the merits of the rival contentions and the application should be decided on its own merits.

7. Writ Petition is accordingly disposed of.

8. The Interim Applications No. 121 of 2022 and 122 of 2022, be listed before the Debt Recovery Appellate Tribunal on **4 May 2023**. Thereafter, the Debt Recovery Appellate Tribunal will pass the suitable orders in the applications.

9. Since we have directed reconsideration of the application in the above circumstances, the interim position which is envisaged under the order dated 12 September 2022 will continue till 4 May 2023. Continuation or otherwise thereof will be decided by the Debt Recovery Appellate Tribunal on its own merits.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2023.04.27 17:32:32 +0530