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

A.S.WRIT PETITION NO. 684 OF 2023

Canara Bank. … Petitioner.
V/s.
Premkumar Devandas Kishnani and another. … Respondents.

WITH
O.S. WRIT PETITION NO. 424 OF 2023

Yogoda Satsanga Society of India. … Petitioner.
V/s.
Premkumar Devandas Kishnani and another. … Respondents.

Mr.Rishabh Shah with Vaishali R. Bhilare and Mr.Saurabh Mandlik for the Petitioner in WP No.684/2023 and for Respondent No.2 in OSWP No.424/2023.
Mr.Rajesh Dubey i/b. Shradha Agrawal for the Petitioner in OS WP No.424/2023 and WP No.684/2023.

Mr.Ankit Lohiya with Ms.Pragya and Ms.Vishakha i/b. Siddharth Walawalkar for Respondent No.1 in WP No.684/2023 and OS WP No.424/2023.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE : 19 April 2023.

P.C. :

These two writ petitions arise from the same order and are between the same parties and, therefore, are disposed of by this common order.

2. The Petitioners have challenged the order passed by the Debt Recovery Appellate Tribunal (DRAT), Mumbai in Interim Application No.569/2022 in Appeal No.1183/2022. The Petitioner in Writ Petition No.684/2023 is Canara Bank, the secured creditor - the Bank. The Petitioner in Writ Petition No.424/2023- Yogoda Satsanga Society of India, is the auction purchaser of the secured asset-the auction purchaser. Respondent No.1 in both petitions is the original Appellant/Applicant before the DRAT. The DRAT has allowed this application filed under section 21 of the Recovery of Debts and Bankruptcy Act, 1993 and has granted a waiver of mandatory pre-deposit to Respondent No.1, the Appellant, before the DRAT.

3. The Bank had filed suit on the original side of this Court Suit No.636/1990 for recovery of dues of Rs.4,26,72,468/- against the defendants. The Bank had sought relief in respect of plot No.19/20 at Wadala, Mumbai, along with the building constructed therein. In the said suit, by order dated 23 March 1990, this Court had granted interim relief in favour of the Bank. After the Debt Recovery Tribunal (DRT) was established, this suit was transferred to DRT and was numbered as Original Application No.2599/1999.

4. During the pendency of the proceeding, the original defendant No.1 - Devandas Kodumal Kishnani, expired, and his legal heirs were brought on record, which included Respondent No.1 as a

son of original defendant No.1. The Bank moved for attachment of the properties, and the sale of the attached properties was proposed. At the time, Respondent No.1 filed an application in November 2019 before the Recovery Officer. Respondent No.1 thereafter filed a review application seeking a review of the order dated 28 November 2019 and the confirmation of sale dated 28 November 2019. The Recovery Officer rejected the review by order dated 27 January 2020. Respondent No.1 filed an appeal before the DRT and also moved an Application No.140/2022 under section 30A of the Act of 1993, seeking a waiver of the deposit. The Presiding Officer of the DRT dismissed the appeal and also observed that the interim application for waiver was not argued.

5. Meanwhile, the property was sold to the auction purchaser. The auction purchaser registered the sale certificate, and physical possession was handed over to the auction purchaser on 16 November 2022.

6. Thereafter, further order was passed, and Respondent No.1 filed an Appeal No.1183/2022 along with Interim Application No.569/2022 seeking a waiver from the pre-deposit. By the impugned order dated 25 November 2022, the DRAT allowed Interim Application No.569/2022 and granted a complete waiver. Challenging this order, the auction purchaser and the Bank are before us by way of these writ petitions.

7. We have heard Mr.Rishabh Shah for the Bank, Mr.Rajesh Dubey for the auction purchaser and Mr.Ankit Lohiya for Respondent No.1 - the original appellant.

8. Section 21 of the Act of 1993 deals with the deposit of the amount of debt due on filing an appeal. This provision stipulates that when an appeal is preferred by any person from whom the amount of debt is due to the bank or the financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has made a deposit of 50% of the amount of debt due from him as determined by the Tribunal under section 19 of the Act of 1993. It is provided that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount of pre-deposit, which shall be at least 25% of the amount of such debt due.

9. It is under this provision that an application was made by Respondent No.1, and a waiver was sought. The only observations as to why a complete waiver was granted are in paragraph-9 of the impugned order. The Presiding Officer of the Appellate Tribunal observed that he was not inclined to delve deep into the merits of the rival contentions, and there was no dispute that Respondent No.1 was only liable to the extent of the estate inherited by him from his father and is not a borrower in the strict sense without the extent of

liability being determined. The Presiding Officer, therefore, proceeded to grant the complete waiver.

10. Section 21 of the Act of 1993 mandates a deposit of 50% of the amount of debt due, and it is for the reasons to be recorded in writing that the amount of pre-deposit can be reduced but not less than 25%. The plain language of the section does not contemplate a complete waiver. It is the endeavour of Respondent No.1 to contend that since Respondent No.1 cannot be considered as a person from whom the amount of debt is due, there is no need for a pre-deposit. Even assuming that this was the ground for the grant of a complete waiver, the DRAT must be satisfied that there is at least prima facie merit in the contention. When even for reduction of pre-deposit from 50% to 25%, the DRAT is obligatory to give reasons, it cannot be said that the reasons need not be given or the cursory reasons are enough when a complete waiver is granted on the basis that the person is not a borrower. Assuming such enquiry is permissible, the conclusion must be supported by adequate prima facie case and cogent reasons. We find such enquiry completely missing from the impugned order. In fact, the DRAT has indicated that it has not examined the merits. The Petitioners have taken strong objection to this approach contending that Respondent No.1 had participated throughout the proceeding and there are observations against Respondent No.1 as regards his liability. Respondent No.1 contends otherwise. Be that as it may, the order

passed by the DRAT is unreasoned and, therefore, will have to be quashed and set aside.

11. Since we have found that the impugned order is completely unreasoned as far as the exercise of powers under section 21 of the Act of 1993 is concerned, we are inclined to set aside the impugned order.

12. Accordingly, the impugned order dated 25 November 2022 is set aside. Interim Application No. 569 of 2022 for waiver filed by Respondent No.1 is restored to file. The DRAT will decide the said application on its own merits.

13. Both writ petitions are disposed of accordingly in above terms.

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