IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15241 OF 2023

Shri Samarth Paper & Board Mill & Ors ...Petitioners

Versus

Bank of India & Ors ...Respondents

Mr. Manoj Harit a/w Harshit Kumar, i/b Manoj Harit & Co., *Advocates for the Petitioners.*

Mr. Rakesh Singh a/w Heena shaikh, i/b M.V. Kini & Co., *for Respondent No. 1.*

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : DECEMBER 07, 2023

PC :

Rule. Respondent No.1 waives notice. With the consent of parties, Rule made returnable forthwith and heard finally.

2 The above Writ Petition is filed in very peculiar facts and circumstances. What is challenged in the above Writ Petition is the order dated 10th August 2021 passed by Respondent No.2 (District

ASHWINI JANARDAN VALLAKATI Digitally signed by ASHWINI JANARDAN VALLAKATI Date: 2023.12.13 15:19:55 +0530

Magistrate, Raigad) under Section 14 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short the **"SARFAESI Act"**).

3 Mr. Manoj Harit, the learned Counsel appearing on behalf of the Petitioners, submitted that originally, after the 13(2) notice [under the SARFAESI Act] was issued, the 1st Respondent Bank obtained an order under Section 14 of the SARFAESI Act from the District Magistrate, Solapur, and sought possession of the factory premises at Solapur [for short the **"Factory Premises"**]. Being aggrieved by this action, the Petitioners filed Securitization Application No. 109/2017 and also preferred Interim Application No. 720/2019 seeking a stay on the possession. He submitted that on this Interim Application, the DRT passed an order on 10th May 2019 and restrained the 1st Respondent Bank from taking possession of the **Factory Premises** at Solapur. He submitted that what is most important to note is that in this order, the DRT came to a *prima facie* finding that the undated Memorandum of Entry produced by the 1st Respondent Bank or the Memorandum of Entry dated 26th March 2013 appeared to be a fabricated document, which would be required to be considered during the final hearing of the Securitization Application. The learned Counsel

Ashwini Vallakati

submitted that in other words, the DRT *prima facie* found that the document recording the creation of an equitable mortgage of the properties mentioned therein [the Memorandum of Entry], was a doubtful document.

4 Mr. Harit submitted that thereafter, the 1st Respondent Bank once again approached the District Magistrate, Pune to take possession of another secured asset covered by the same Memorandum of Entry, namely, the residential premises belonging to Petitioner Nos. 2 and 3 situated at Pune [for short the **"Pune Residence"**]. Being aggrieved by this action, the Petitioners preferred another Interim Application, namely, Interim Application No. 583/2023 seeking a stay on possession. Mr. Harit submitted that despite the earlier order passed by the DRT dated 10th May 2019, and which records a *prima facie* finding that the Memorandum of Entry is a doubtful document, the DRT, by its order dated 17th March 2023, unnecessarily imposed a condition on the Petitioners to deposit a sum of Rs. 50 Lakhs to ensure that possession of the **Pune Residence** is not taken by the 1st Respondent Bank. He submitted that this order, though wrong, was accepted by the Petitioners and they deposited a sum of Rs. 50 Lakhs with the DRT.

5 Mr. Harit submitted that now again the 1st Respondent Bank has secured an order under Section 14 of the SARFAESI Act from the District Magistrate, Raigad in relation to another asset covered by the same Memorandum of Entry, namely, the residential house of Petitioner No. 4 situated at Kharghar [for short the **"Kharghar Residence"**]. He submitted that looking at the conflicting orders passed by the DRT in relation to the other two properties, the Petitioners have been constrained to approach this Court directly. The only submission canvassed by Mr. Harit was that once the DRT came to a finding that the Memorandum of Entry itself was fabricated, then no property described in the said Memorandum of Entry could have been taken possession of by the 1st Respondent Bank. In other words, every time the 1st Respondent Bank secured an order under Section 14 [of the SARFAESI Act] in relation to any of the properties mentioned in the said Memorandum of Entry, the DRT ought to have granted a stay without imposing any conditions, as was done in the case of the **Factory Premises** at Solapur. He submitted that the DRT, being a judicial authority, has to be consistent and cannot vacillate in this fashion merely because the Presiding Officer of the concerned DRT has changed. He therefore submitted that until the Securitization Application No.109/2017 is heard and decided by the DRT, Pune, the 1st

Respondent Bank be restrained from taking possession of any of the properties mentioned in the Memorandum of Entry relied upon by the 1st Respondent Bank.

6 On the other hand, Mr. Rakesh Singh, the learned Advocate appearing on behalf of the 1st Respondent Bank, submitted that an amount of approximately Rs. 21 Crores is due and payable by the Petitioners to the 1st Respondent Bank. He submitted that the Petitioners submitted a one-time settlement proposal for a meagre sum of approximately Rs. 4 Crores. Mr. Singh submitted that since huge monies are due and payable to the 1st Respondent Bank by the Petitioners, and keeping in mind the objects and reasons of the SARFAESI Act, no interference is called for by this Court under Article 226 of the Constitution of India. He submitted that this is more so when one takes into consideration that the Petitioners have an equally efficacious alternate remedy to approach the DRT [under Section 17] and seek a restraint order against the 1st Respondent Bank from taking possession of the **Kharghar Residence**. Mr. Singh therefore submitted that the Writ Petition be dismissed with costs.

7 We have heard the learned Counsel for the parties at

length. We have also perused the papers and proceedings in the above Writ Petition. At the outset, we must mention that it is an admitted position before us that all the three properties mentioned herein, namely, (i) the **Factory Premises** at Solapur; (ii) the **Pune Residence**; and (iii) the **Kharghar Residence**; form part of the same Memorandum of Entry relied upon by the 1st Respondent Bank, and on which the DRT has given a *prima facie* finding that the same is fabricated. We say this because when the 1st Respondent Bank sought to take physical possession of the **Factory Premises** at Solapur, the Petitioners approached the DRT by filing Securitisation Application No. 109/2017. In that Securitisation Application the Petitioners also filed Interim Application No. 720/2019. That Interim Application was disposed of by order dated 10th May 2019 and the 1st Respondent Bank was restrained from taking physical possession of the **Factory premises** at Solapur. The reason for the stay is more particularly stated in paragraph 3 of the said order which reads thus:

> ***"3. Prima facie, it appears that the undated Memorandum of Entry produced by defendant or the Memorandum of Entry produced by defendant or the Memorandum of Entry dated 26th March, 2013 is fabricated document which is required to be gone into during the final hearing of the securitisation application."***

8 Despite this finding, the 1st Respondent Bank secured

another order under Section 14 from the District Magistrate, Pune in relation to the **Pune Residence** belonging to Petitioner Nos. 2 and 3. That was also challenged by filing Interim Application No. 583/2023. That Interim Application was disposed of by the DRT vide its order dated 17th March 2023, by directing the 1st Respondent Bank not to take possession of the **Pune Residence** subject to the Petitioners depositing a sum of Rs. 50 Lakhs in the DRT.

9 Firstly, we fail to understand as to why, without noting any change in circumstances, the Petitioners were directed to deposit a sum of Rs. 50 Lakhs when the DRT had already [in its earlier order dated 10th May 2019] given a *prima facie* finding that the concerned Memorandum of Entry was a fabricated document, and had already granted an unconditional stay in relation to the **Factory Premises** at Solapur. Be that as it may, in order to save the **Pune Residence** belonging to Petitioner Nos. 2 and 3, they deposited the amount of Rs. 50 Lakhs in compliance of the order dated 17th March 2023 passed by the DRT.

10 The subject matter of the present Petition is now the **Kharghar Residence** of Petitioner No. 4. Though under normal

circumstances we would have relegated the Petitioners to avail the alternate remedy under Section 17 of the SARFAESI Act and file an Interim Application in their pending S.A., [just like they have done for the **Factory Premises** at Solapur and the **Pune Residence**], looking at the conflicting orders passed by the DRT, in the peculiar facts and circumstances of the present case, we are of the opinion that until the DRT decides the Securitization Application filed by the Petitioners, namely, Securitization Application No. 109/2017, the 1st Respondent Bank ought to be restrained from taking possession of any of the secured assets which form the subject matter of the concerned Memorandum of Entry. We say this because the DRT itself, by its order dated 10th May 2019, has given a *prima facie* finding that the concerned Memorandum of Entry, and which records the creation of a mortgage of all the properties mentioned therein, is fabricated.

11 To balance the equities and to ensure that the 1st Respondent Bank does not suffer this stay order indefinitely, we request the DRT, Pune to decide Securitization Application No. 109/2017 as expeditiously as possible, and in any event within a period of three months from today. We make it clear that the DRT shall not grant any adjournment to any of the parties unless exceptional circumstances are

made out. We hasten to add that we have not examined whether the concerned Memorandum of Entry is fabricated or otherwise. This issue will be decided by the DRT, Pune on its own merits and in accordance with law. We have passed this order only because the interim order passed by the DRT on 10th May 2019, and which records that *prima facie* the concerned Memorandum of Entry is fabricated, is not challenged by the 1st Respondent Bank, and the DRT has been taking an inconsistant position with regard to other properties covered by the same Memorandum of Entry.

12 Rule is made absolute in the aforesaid terms and the above Writ Petition is disposed of in terms thereof. However, there shall be no order as to costs.

13 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.

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