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

WRIT PETITION NO. 3767 OF 2022

Diju Enasy and Anr. … Petitioners

V/s.

ICICI Bank Limited and Ors. ... Respondents

with
WRIT PETITION NO. 598 OF 2023

Shailendra Gopal Agarwal and Anr. … Petitioners

V/s.

ICICI Bank Limited and Ors. ... Respondents

Mr. Nikhil Wadikar with Mr. Pradip Zende i/b. Nandu Pawar for the Petitioners
Mr. Anshul Anjarlekar i/b. Raval Shah & Co. for the Respondent No.1

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 9 MARCH 2023

P.C. **:-**

Heard the learned Counsel for the parties.

2. On 23 February 2023, the following order was passed :-

> *" The learned Counsel for the Petitioners has draw our attention to the orders dated 1 February 2023 and 6 February 2023 passed in Writ Petition No. 7562 of 2021 and connected Petitions wherein certain course of action has been adopted in case of the parties identically situated as the Petitioners. The Petitioners will give notice to the Respondents and file affidavit of service.*
>
> *2. Stand over to 9 March 2023. To be listed under the caption "For Directions".*

3. The learned Counsel for the Petitioners has placed before us copy of the order passed in Writ Petition No. 7562 of 2021 dated 6 February 2023 which in turn refers to order passed on 1 February 2023 in Writ Petition No. 1230 of 2023 and Ors. The order dated 1 February 2023 reads thus :-

> *" Writ Petition (St.) No. 2863 of 2023 is not on board. Same is taken on board by way of praecipe.*
>
> *2. Heard the learned Counsel for the parties.*
>
> *3. The Petitioners are aggrieved by the action taken by the Respondent – Secured Creditor in approaching the Executive Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). The Petitioners had earlier filed Writ Petition No. 7562 of 2021 and other connected matters*

challenging the action taken by the Respondents under Section 14 of the SARFAESI Act. The Division Bench of this Court scrutinizes the matter as pointed out by the Respondents with the following objectives as reflected in paragraph 42 :-

"42. The endeavor of this Court has been to ensure that the financial misdeeds in relation to the Project are exposed, the money trail unearthed and the culprits are brought to justice in accordance with law. All observations of this Court are only prima facie in nature. The rival contentions of the parties have not been adjudicated upon by this Court and all rights and contentions in that regard are expressly kept open to be adjudicated upon in appropriate proceedings at the appropriate stage."

4. Thereafter the Respondent – Secured Creditors have moved the District Magistrate under Section 14 of the SARFAESI Act, the Petitioners are before us by way of these Petitions.

5. The learned Counsel for the Petitioners sought to contend that the Petitions be entertained as there is a fraud committed by the Respondent – Developers and sought to rely upon the decision of the Hon'ble Supreme Court in the case of Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and Ors.[1]*.*

6. Having considered the purpose and object of the earlier order passed by this Court and having considered the settled position of law as laid down by the Supreme Court in the cases governing SARFAESI Act, we are of the opinion that the Petitioners will have to get their grievances redressed before the Debts

1 (1998) 8 SCC 1

Recovery Tribunal. The Hon'ble Supreme Court in the case of Union Bank of India v/s. Satyawati Tandon and Ors.[2] *after taking review of the earlier judicial pronouncements has held that since the SARFAESI Act is a complete Code, the writ jurisdiction ought not to be exercised.*

7. As regards the grievance made by the learned Counsel for the Petitioners that the attempt of the Respondent – Secured Creditor to apply to the District Magistrate under Section 14 of the SARFAESI Act is in violation of the status-quo is concerned, the learned Counsel for the Respondent – Secured Creditors pointed out that the order of status-quo was upon certain conditions. The learned Counsel for the parties have sought to debate before us whether these conditions are in fact satisfied or not. This is another area of factual adjudication that has arisen before us. Considering the totality of the circumstances and the position of law as above, we are of the opinion that appropriate course of action would be to defer the action of the Respondents for some time so that the Petitioners can agitate their grievance before the Debts Recovery Tribunal.

8. Accordingly, we dispose of the Writ Petitions directing the Respondent – Secured Creditors not to take physical possession of the flats involved in the Petition for a period of four weeks from today. All contentions of the parties including the one raised in the Petition are kept open to be agitated before the Debts Recovery Tribunal.

9. The Writ Petitions are disposed of in the above terms.

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2 AIR 2020 SC 3413

> *10. We make it clear that the protective order that we have passed will apply only in respect of the Petitioners who are before us."*

4. We see no reason to take any different view. The Writ Petitions are accordingly disposed of in light of the order dated 1 February 2023 keeping all contentions of the parties open. The Respondent – secured creditor will not take physical possession of the flats involved in the Petitions before us for a period of four weeks from today.

5. Writ Petitions are accordingly disposed of.

6. We are informed that the Petitioners have already filed an appeal in the Debts Recovery Tribunal.

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