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

WRIT PETITION NO. 4482 OF 2022

Suketu Ramesh Jhaveri & Others. .. Petitioners.
Versus
M/s. Cholamandalam Investment & Finance Company Ltd. ..Respondent.

Ms. Heena Mody for the Petitioner.
Ms. Dimple Tejani i/b Ms. Medha Rane for the Respondent.

CORAM : NITIN JAMDAR & ABHAY AHUJA, JJ.

DATE : 24 FEBRUARY 2023.

P. C. :

Heard learned counsel for the parties.

2. The Petitioner is before us challenging the order of Debts Recovery Appellate Tribunal [for short "the DRAT"] dated 2 August 2022 in an appeal filed by the Respondent–financial institute, under section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short "the SARFAESI Act"]. The appeal was filed against the interim order passed by the Presiding Officer, Debts Recovery Tribunal-II, Mumbai dated 21 March 2018.

3. The Petitioner had filed Securitisation Application No.177 of

2018 in respect of the steps taken by the Respondent–secured creditor under the SARFAESI Act. In the said application, the Petitioner filed an Interim Application No.445 of 2018, praying for protecting their possession of the mortgaged property. At that time, the date for taking possession was fixed on 22 March 2018. The Debts Recovery Tribunal by a short order observed that since the interim order of status quo is passed in Commercial Arbitration Petition No.55 of 2017 between the parties by this Court, the same order should continue. This interim order was passed and interim application was disposed of by the order dated 21 March 2018. This order was challenged by the Respondent before the appellate tribunal–DRAT. The DRAT opined that the interim order of status quo could not have been passed based solely on the order passed in arbitration proceedings. The DRAT relied upon the decision in the case *of M. D. Frozen Foods Export Pvt Ltd vs. Hero Fincorp Ltd [(2017) 16 SCC 741]* to hold that the arbitration proceedings and measures under the SARFAESI Act can simultaneously continue. Thereupon, the DRAT held that DRT was not justified in granting status quo and set aside the order passed by the DRT and directed that the main application should be disposed of on its own merits.

4. Learned counsel for the Petitioner makes a grievance that if the DRAT was of the view that the DRT could not have passed the order granting protection based only on the order passed in the

arbitration proceedings, then, by not granting any protection in the meanwhile, the Petitioner has been rendered remediless. Learned counsel for the Petitioner submits that it is not that the DRT has refused to grant any interim measures on the merits of the case.

5. Learned counsel for the Respondent–secured creditor submits that the Petitioner is not diligent in prosecuting their application and as of today, no date for taking possession has been fixed.

6. In a decision rendered in the case of *ASREC (India) Ltd vs. Fastgrowth Hospitality LLP [O.S. Writ Petition (Ld) No.39107 of 2022, decided on 18 January 2023]* this Court has enumerated the grounds for grant of interim reliefs by the DRT. It has been held that grant of interim relief by the tribunal cannot be a mechanical exercise and in a fit case, the tribunal can also consider directing the borrowers to deposit admitted amounts as a condition precedent for granting protective measures.

7. Since the DRT has not taken any decision on merits, it is open to the Petitioner–borrower to approach the DRT to seek interim measures. The main securitisation application has already been expedited by the DRAT. In case, the Respondent–secured creditor takes steps for taking possession of the secured assets or sale of property, they will give advance notice. It is open to the Petitioner to approach the

DRT with their prayer for grant of interim orders, which application will be considered by the DRT in the light of what is stated by the DRAT in the impugned order and in the decision of this Court in *ASREC (supra).*

8. With these observations, the writ petition is disposed of.

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