# IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR

## WRIT PETITION NO. 4362 OF 2023

(Shri Mahesh s/o Udernomal Bhateja Vs. Union of India & Ors.)

| *Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.* | *Court's or Judge's order* |
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Shri J.B. Gandhi with Shri R.K. Thakkar, Advocate for the petitioner.
Shri S.N. Fuladi with Shri U.N. Fuladi, Advocate for respondent No.2.

**CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.**
**DATE : JULY 14, 2023**

The challenge raised in the present Writ Petition is to the order dated 12/7/2023 passed by the learned Presiding Officer, Debts Recovery Tribunal, Nagpur in Securitisation Application No. 217/2023. By the said order, the interim application preferred by the petitioner seeking protection in view of the sale notice issued by respondent No.2 – Bank came to be rejected. The petitioner contends that the auction of the mortgaged property which is stated to be an agricultural land was illegal.

2] Initially, the petitioner had approached this Court by filing Writ Petition No. 4282/2023 seeking to challenge the auction of the mortgaged property. The Writ Petition was not entertained on 11/7/2023 since remedy of challenging such auction under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the Act of 2002”) was available. Pursuant to this order, the petitioner has filed the aforesaid proceedings and in those proceedings, the interim application was moved seeking an order of protection. The Tribunal recorded submissions of both sides and rejected the application merely by observing as under :

> “XXXX *Considering the submissions of both sides, material placed on record, I do not find any merit in the present application. Accordingly the same is hereby rejected. However, if the sale is concluded, the same shall be subject to final outcome of the S.A.”*

3] The learned Counsel for the petitioner submits that the mortgaged property as indicated in the sale deed dated 31/12/2009 as well as the notice for settling the sale proclamation issued in view of the order passed in Original

Application No. 460/2016 having described the said land as agricultural land, it was not permissible to make the said land subject to such process. Reference was made to the decision in *Paul Vs. T. Mohan And Another [(2020) 5 SCC 138]* in that regard. It was therefore necessary for the Tribunal to have *prima facie* considered whether the said land is agricultural land or not before deciding the prayer for interim protection. Reliance was also placed on the decision in *Indian Bank and Anr. Vs. K. Pappireddiyar and Anr. [AIR 2018 SC 3540].* To indicate bonafide of the petitioner, the amount of Rs.1,00,00,000/- (rupees one crore) was deposited with the Tribunal and it was prayed that the possession of the petitioner be protected.

4] The learned Counsel for respondent No.2 – Bank opposed the aforesaid submissions. At the outset, it was submitted that against the order passed by the Debts Recovery Tribunal, Nagpur, remedy of filing an appeal under Section 18(1) of the Act of 2002 was available. Referring to the decisions in *Varimadugu Obi Reddy Vs. B. Sreenivasulu & Ors. [2022 LiveLaw (SC) 967]* and *South Indian Bank Ltd. and Others Vs. Naveen Mathew Philip and Another [2023 SCC OnLine SC 435]* it was submitted that the present Writ Petition did not deserve consideration. The learned Counsel further submitted that the auction having been held and 25% of the bid amount having been deposited, interest of a third party has been created. The Tribunal had directed that the sale if concluded was subject to the final outcome of the Securitisation Application and hence no interference was called for. Attention was also invited to the steps taken pursuant to the bids received in the auction. It was thus submitted that the Writ Petition was not liable to be entertained.

5] We have heard the learned Counsel for the parties. At the outset, we may state that the order dated 12/7/2023 passed by the learned Presiding Officer rejecting the interim application No. 1433/2023 can be challenged by invoking remedy under Section 18 of the Act of 2002. It is therefore not necessary to enter into the challenge on merits to the order dated 12/7/2023. The petitioner claims to be in possession of the mortgaged property and the only aspect to be considered is whether any discretion can be exercised till the period the statutory appeal is preferred. We are dealing with a case where there exists an alternate remedy to be availed. The present is not a case where this Court lacks jurisdiction to entertain the proceedings. With this aspect in mind, we note that the impugned order merely records contentions of both parties and proceeds to hold that there was no merit found in the interim application. The petitioner has raised the question with regard to the status of the mortgaged property by urging that it is an agricultural land. The Bank has also relied upon the revenue record dated 29/9/2020 before the Tribunal which shows the said land as 'Jirayat' land meaning that it is semi-agricultural. This aspect thus required some consideration, albeit *prima facie* by the Debts Recovery Tribunal but the same has not been done.

6] It is pointed out that the petitioner is in possession of the mortgaged property which he states is an agricultural land. The possession of the same is liable to be taken pursuant to the auction that has been made. Hence, while relegating the petitioner to avail the statutory remedy of approaching the Debts Recovery Appellate Tribunal, we find that the position as prevailing today ought to be maintained for a period of ten days to enable such remedy to be exhausted. This is for the reason that the Appellate Tribunal is situated at Mumbai and possession of the property in question is sought to be taken today.

7] Accordingly, the following order is passed :

**ORDER**

i] The challenge to the order dated 12/7/2023 on merits is not entertained since remedy of filing appeal before the Debts Recovery Appellate Tribunal is available. For a period of ten days from today, the position as prevailing today with regard to the possession of the mortgaged property shall be maintained. The Debts Recovery Appellate Tribunal shall consider the appeal on its own merits without being influenced by the order of protection granted hereinabove.

ii] All points raised on merits are kept open. The Writ Petition is disposed of. No costs.

**(MRS. VRUSHALI V. JOSHI, J.)** **(A. S. CHANDURKAR, J.)**

SUMIT