

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4747 OF 2023

1 Shri.Kishan Metharam Balani, aged
about 66 years, Occupation Business.

2 Smt.Shobha Kishan Balani, Aged
about 65 years, Occupation:Housewife

Both r/o Plot No. 8, House No.17,
Radha Bahwan, Main Bus Stop,
Jaripatka, Nagpur 440014.

Petitioners

-Vs.-

ICICI Bank Having it's Branch office
at, Civil Lines,Nagpur through its
Authorised Officer.

Respondent

Mr .G.L.Agrawal, counsel for the petitioners.
Mr.A.I.Shaha, counsel for respondent.

**CORAM:A.S.CHANDURKAR AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 28th July, 2023

O R A L J U D G M E N T (Per :A.S.Chandurkar, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties. Shri. A.I.Shah, learned counsel waives notice for the respondent. The petitioners have approached to this Court seeking to raise challenge to the order dated 27.07.2023 passed by the learned Presiding Officer, Debt Recovery Tribunal rejecting the interim

application that was preferred by the petitioner with a view to protect the possession of the mortgaged property, which is a residential house.

3. The learned counsel appearing for the petitioners submits that the impugned order was passed on 27.07.2023 and the possession of the mortgaged property is scheduled to be taken on 31.07.2023. He submits that within a period of eight days, the order dated 27.07.2023 would be challenged before the Appellate Tribunal and hence some breathing time be granted for that purpose. Since, the Appellate Tribunal is located at Mumbai, the aforesaid time be granted.

4. The writ petition is opposed by the learned counsel for the respondent on the ground that the petitioners have failed to repay the amounts that are due. While enforcing the security interest, the possession of the mortgaged property is to be taken. It is therefore submitted that no relief be granted to the petitioners.

5. It is not in dispute that on 27.07.2023 the Debts Recovery Tribunal has refused to grant any interim relief to the petitioners. As per the notice given by the respondent, the physical possession of the residential house occupied by the petitioners is

to be taken on 31.07.2023. Since, the petitioners seek to invoke the appellate remedy, for which they would be required to approach the Appellate Tribunal at Mumbai, we are inclined to consider the alternate prayer for grant of breathing time to challenge the order dated 27.07.2023 in appeal. We are not inclined to entertain the challenge to the order dated 27.07.2023 on merits. Accordingly, the following order is passed :-

Subject to the petitioners depositing an amount of Rs.4,00,000/- with the Registrar, Debt Recovery Tribunal , Nagpur in Securitisation Appeal No.290 of 2023, the possession of the petitioners shall not be disturbed for a period of eight days, which would be till 07.08.2023. The aforesaid amount shall be deposited by 31.07.2023 and subject to such deposit, the protection would continue till 07.08.2023. The respondent is at liberty to move the Debt Recovery Tribunal to seek the withdrawal of the aforesaid amount. Keeping all questions open, the writ petition is disposed of in the aforesaid terms.

6. Rule is made absolute in the afore-stated terms.

(MRS.VRUSHALI V. JOSHI, J)

(A.S.CHANDURKAR,J)