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

WRIT PETITION 6350 OF 2022

Mrs. Mamta Suraj Wankhade,
Aged about 33 years, Occ. Housewife,
r/o. Flat No. 601, Apartment no. 601,
"ONE ANUSHKA" situated at
Plot No. 1, Trimurty Nagar,
Nagpur 440 022 .....**PETITIONER**

...V E R S U S...

1. Banking Ombudsman
Reserve Bank of India
4th Floor, RBI Byculla Office Building,
Opp. Mumbai Central Railway Station,
Byculla, Mumbai 400 008
Email.crpc@rbi.org.in

2. IDBI Bank Limited,
Through its Branch Manager,
IDBI Bank, Civil Lines,
Nagpur 440 001 ..**RESPONDENTS**

Mr. Y.D. Nagpure, counsel for petitioner.
None for respondents.

CORAM:- ROHIT B. DEO & Y.G. KHOBRAGADE, JJ.
DATE : 16.02.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard the learned counsel for the petitioner.

2. We had heard the learned counsel for the petitioner at

length on 18.1.2023 and the hearing was adjourned to enable the learned counsel for the petitioner to seek appropriate instructions on whether the petitioner is inclined to seek appropriate relief from the Debt Recovery Tribunal ("DRT") where proceedings are already pending as regards the other loan availed by the firm in which the husband of the petitioner Mr. Arun Wankhade was a partner.

3. The learned counsel for the petitioner informs us that the petitioner is not inclined to approach the DRT. It is further submitted that the DRT would not be in a position to grant the relief claimed in the present petition.

4. The petitioner avers that her deceased husband Mr. Suraj Wankhade had availed house loan from respondent 2 – bank. As security for the loan of Rs. 97,72,000/-, Mr. Suraj Wankhade had deposited the original title papers of the property and mortgage was created.

5. The petitioner avers that Mr. Suraj Wankhade unfortunately expired on 6.11.2021. As on March 2021, the outstanding loan was Rs.1,00,54,399/-. However, the loan was insured and the Max Bupa Insurance Company deposited the

insurance claim amount of Rs. 95,42,061/- with the respondent 2 – bank. The petitioner claims that she transferred Rs. 6,50,000/- from her account to the loan account with the result that after adjusting the arrears, she made excess payment of Rs. 61,384/-. The grievance of the petitioner is that the respondent 2 – bank had not returned the title papers of the property which was mortgaged.

6. While we do not have benefit of hearing the learned counsel who represents the respondent 2, since the counsel is absent, we have scrutinized the material on record.

7. We have in particular perused Original Application 247/2022 which is filed by respondent 2 – bank before the DRT.

8. Original Application 247/2022 is filed against the petitioner and other legal heirs of Mr. Suraj Wankhade. It is averred in the said application that Mr. Suraj Wankhade was the proprietor of M/s. Suraj Agro Agency. Mr. Suraj Wankhade approached the respondent 2 – bank, as the proprietor of M/s. Suraj Agro Agency, for cash credit facility and term loan and the other legal heirs including the petitioner herein executed documents of guarantee. According to respondent 2, the total outstanding against the financial assistance extended to Mr. Suraj

Wankhade is Rs. 4,60,45,000/- as on 5.8.2021. The primary security is the current assets of the firm and additionally the immovable properties of Mr. Suraj Wankhade are mortgaged.

9. We note from the stand of the respondent 2 – bank as is reflected in the response given to the notice issued by the counsel on behalf of the petitioner, that right to attach apartment 102 located on the first floor of Nanik Adisun's is asserted. The submission of the learned counsel for the petitioner is that the said apartment 102 was not offered as security for the loan availed by Mr. Suraj Wankhade, and which was guaranteed by the legal heirs.

10. It is trite law, that the right to attach can be enforced qua any property, whether offered as security or otherwise. If according to the petitioner, the said apartment cannot be attached, the remedy is to prefer an appropriate application in the pending proceedings before the DRT. We do not find any reason to intervene in writ jurisdiction.

11. We dispose of the petition reserving liberty with the petitioner to either approach the DRT or if according to the petitioner DRT is not the right forum, to file a civil proceedings, and to seek an appropriate orders from the Civil Court.

12. Before we part with the order, we may also observe that there is a serious question as regards the very maintainability of the petition. IDBI is not either State or an instrumentality of the State given its present structure, and writ may not lie.

13. The petition is disposed of.

(Y.G. Khobragade, J.) **(Rohit B. Deo, J.)**

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