

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

WRIT PETITION NO. 7317 OF 2022

Shri Atul S/o Ganeshrao Watkar,
aged about 30 years, Occ. Business (Saloon),
R/o Plot No. 370, Hiwan Layout,
Wathoda Road, Bhandewadi, Nagpur – 440008.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through Ministry of Finance, Mumbai.
2. Kotak Mahindra Bank Ltd.,
Shankar Nagar, Nagpur,
through its Authorized Officer.

RESPONDENTS

Ms. Bhumika Sarda, Advocate for the petitioner.
Ms. S.S. Jachak, Assistant Government Pleader for respondent No.1/ State.
Shri M. Anilkumar, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

ARGUMENTS WERE HEARD ON : DECEMBER 22, 2022

JUDGMENT IS PRONOUNCED ON : JANUARY 11, 2023

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

In view of notice for final disposal issued earlier, we have heard the learned Counsel for the parties at length along with Writ Petition No. 6530/2022.

2. The petitioner had obtained loan of Rs.89,00,000/- from respondent No.2 in July – 2019 by mortgaging his immovable property as security. The monthly instalment payable was Rs.93,011/-. There being

default in paying the said instalments, the creditor initiated proceedings under the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short “the Act of 2002”). On 4/5/2022, an order was passed by the learned Magistrate directing delivery of possession of the mortgaged property. Being aggrieved, the petitioner filed a Securitisation Application before the Debts Recovery Tribunal (DRT) raising challenge to the same. An application seeking interim relief so as to restrain the creditor from taking physical possession was also filed. On 23/6/2022, the learned Member of the Tribunal passed an order on the interim application and permitted the petitioner to pay overdue balance amount of Rs.8,00,000/- by 15/8/2022. The petitioner was further permitted to pay monthly instalments regularly from July – 2022. Thereafter, on 16/8/2022, the petitioner moved an application seeking extension of time to make the payment of last instalment of Rs.8,00,000/-. On 17/8/2022, the learned Member of the Tribunal rejected the prayer for extension of time. Being aggrieved, the petitioner approached this Court in Writ Petition No. 5158/2022 challenging that order. On 26/8/2022, the said Writ Petition was disposed of in the light of the fact that an alternate remedy was available to the petitioner. The Writ Petition was thus permitted to be withdrawn with the said liberty. Thereafter, the petitioner approached the Debts Recovery Appellate Tribunal, Mumbai (DRAT) along with a stay application. On 8/9/2022,

the DRAT passed an order permitting the petitioner to deposit sum of Rs.25,00,000/- in two equal instalments, the first instalment of Rs.12,50,000/- was to be paid on or before 29/9/2022 and the instalment was to be paid by 13/10/2022. This was after invoking the third proviso to Section 18(1) of the Act of 2002. The petitioner however could not comply with the said direction and failed to deposit the amount of Rs.12,50,000/-. Consequently, on 30/9/2022, the appeal stood dismissed for failure to comply with the order dated 8/9/2022.

Being aggrieved by the aforesaid orders passed by the DRAT, the present Writ Petition has been filed.

3. The learned Counsel for the petitioner adopted the arguments made by the learned Senior Advocate for the petitioners in Writ Petition No. 6530/2022. It was submitted that even during pendency of the present proceedings, an amount of Rs.8,00,000/- was paid to the creditor which indicated the petitioner's bonafides. It was submitted that the amount due from the petitioner has not been adjudicated and the dispute in the appeal being limited to the refusal by the Tribunal to extend the time to make deposit in terms of the earlier order dated 23/6/2022, the petitioner was entitled for appropriate relief.

4. The learned Counsel for respondent No.2 – creditor opposed the aforesaid submissions and re-iterated the stand as taken in Writ

Petition No. 6530/2022. He also placed reliance on the very same decisions relied upon therein.

5. In Writ Petition No. 6530/2022, we have considered the judgment of the Division Bench in *Keystone Constructions Vs. State Bank of India And Ors.* [2013 LawSuit(Bom) 1588] and we have held that even in the absence of a *prima facie* determination by the Tribunal of the amount of debt due for the purposes of pre-deposit under the second and third provisos to Section 18(1) of the Act of 2002, the amount claimed by the creditor would be the amount that has to be taken into consideration for such purposes. We find that for the reasons contained in paragraphs 5 and 6 of the judgment in Writ Petition No. 6530/2022, the petitioner would not be entitled to any relief whatsoever. Hence for said reasons the order dated 8/9/2022 passed by the Tribunal thus does not call for any interference. For failure to comply with that order, the consequential order dated 30/9/2022 also does not deserve to be interfered with.

6. In that view of the matter, we do not find any merit in the Writ Petition. It is accordingly dismissed leaving the parties to bear their own costs.

7. At this stage, the learned Counsel for the petitioner prays that no coercive steps be taken for a period of four weeks from today.

This request is opposed by the learned Counsel for the creditor.

8. In the facts of the case, for a period of four weeks from today, no coercive steps shall be taken against the petitioners.

(ANIL L. PANSARE, J.)

(A.S. CHANDURKAR, J.)

Sumit