



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

WRIT PETITION NO. 8240 OF 2023

(Sagar Kirana and Dhanya Bhandar..Vs... Gandhibag Sahakari Bank Ltd, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.D. Sharma with Mr. PD. Sharma and Mr. D.H. Sharma,
counsel for petitioners.
Mr. Vikas D. Bemarker, counsel for respondent.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 19-12-2023

Heard learned counsel for the petitioners.

2. It is contended that by order dated 19.06.2023, Debt Recovery Tribunal ("DRT"), Nagpur has vacated the protection order granted in favour of the petitioners for non-complying to the undertaking given by them to pay a sum of Rs.40,00,000/- and also settle the debt by complying with the OTS proposal.

3. Being dissatisfied with the said order, petitioners have preferred to appeal before DRAT, Mumbai along with Interim Application No. 538/2023.

4. On 13.10.2023, the learned Chairperson, DRAT, Mumbai passed an order and thereby directed petitioners to deposit a sum of Rs. 25,00,000/- as pre-deposit in the Tribunal and as per the request of learned counsel for the petitioners, four weeks time was granted to deposit the said amount. Accordingly, the learned Chairperson, DRAT granted time till 10.11.2023 to deposit Rs. 25,00,000/- in the Tribunal as pre-deposit. In the said order, it is also

observed that in case of default of payment in time, the appeal shall stand dismissed without further reference to the Tribunal, and on payment of the amount, further proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act shall be stalled or deferred till the next date of hearing and interim application was disposed of.

5. In pursuance of the said order, petitioners failed to deposit the amount in the Tribunal till 10.11.2023. As a sequel, on 13.11.2023, the learned Chairperson, DRAT, Mumbai dismissed the appeal for non-compliance of the order dated 13.10.2023. In the said order, it has been observed that petitioners have not shown their bonafide to pay the amount. Being aggrieved by the said order, petitioners preferred this petition.

6. The learned advocate for the petitioners humbly submitted that petitioners are ready to deposit Rs. 25,00,000/- as pre-deposit amount as directed by the learned Chairperson, DRAT, Mumbai. Therefore, he has prayed for an extension of the time to deposit the amount by setting aside the impugned order dated 13.11.2023 dismissing the appeal.

7. Today, learned counsel for the petitioners has brought a demand draft of Rs. 25,00,000/- in the name of Registrar, DRAT, Mumbai, and the copy of the same is tendered in the Court.

8. Having considered the same, it seems that petitioners have shown their bonafide to deposit the amount of Rs. 25,00,000/- as pre-deposit. In view of the same, we deem it appropriate to grant one more opportunity to the petitioners to contest their appeal on merits. If the petitioners are permitted to deposit the amount then it would not cause prejudice to the other side. On the contrary, the petitioners would get a chance to make out their case before the DRAT. Per contra, if the matter is dismissed summarily, then the petitioners will be deprived of their valuable right of contesting the matter on merit. That being so, we deem it proper to allow the petition by granting the petitioners an opportunity to deposit the amount in the DRAT. Hence, in the interest of justice, we pass the following order:

ORDER

(i) Petition is partly allowed subject to deposit of the amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) as pre-deposit in the learned DRAT, Mumbai on or before 22.12.2023, else, the petition shall stand dismissed without further reference to Court.

(ii) On deposit of the amount, the appeal be restored to its original position along with the interim orders passed therein, if any.

(iii) The petitioner is also directed to pay the cost of Rs. 25,000/- (Rupees Twenty-Five Thousand) to respondent No. 1 on or before 22.12.2023.

9. Petition is partly allowed and disposed of in the aforesaid terms.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Belkhede