



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4917 OF 2024

- 1] Mallikurjun Distilleries Pvt. Ltd.
A Private Limited Company Incorporated under the provisions of the Companies Act, 1956, having its registered office at Flat No. 10, 11, 3rd Floor Chinara Building, Opposite Krushi Bhavan, Near Sahakar Sankul, Shivaji Nagar, Pune represented through its Director, Mr. Omprakash Babuappa Khake,
Age – 65 years, Occu – Business,
R/o – Om Bunglow, 25, 26 Surana Nagar,
Jalna Road, Aurangabad
- 2] Mr. Omprakash Babuappa Khake
Age – 65 years, Occu – Business,
R/o – Om Bunglow, 25, 26 Surana Nagar,
Jalna Road, Aurangabad
- 3] Pranav Omprakash Khake,
Age : 35 years, Occu – Business,
R/o – Om Bunglow, 25, 26 Surana Nagar,
Jalna Road, Aurangabad

.. Petitioners

Versus

- 1] Authorized Officer,
Union Bank of India,
6/7, Jeevan Prakash, LIC Building,
Shivajinagar, Pune – 411 005 (Orig.Resp. No.1)
- 2] Union Bank of India,
6/7, Jeevan Prakash, LIC Building,
Shivajinagar, Pune – 411 005 (Orig.Resp. No.2)
- 3] Sadharam Patladhamal Wadhmani
Sanjay Sadharam Wadhmani
Director M/s. Deccan Sugars Pvt.
Ltd., Wadhwani Complex,
Netaji Chowk, Yavatmal – 445 001 and
Devrao Patil Nagar, Mangrul,
Post Belora, Tq. Dist. Yavatmal (Orig.Resp. No.3)
- 4] Basawaraj Mangrule
64, Maxurban Col. Shanoorwadi,
Darga Road, Aurangabad,
Maharashtra (Orig.Resp. No.4)

.. Respondents

...
Advocate for petitioner : Mr. Uday P. Bobade with Mr. A.Z. Mookhtiar i/by
Mr. Pramod Gaekwad
Advocate for respondents no. 1 and 2 : Mr. Atul A. Mishra
Advocate for respondent no. 3 : Mr. Puneet Gogad, Shri Ameya Sabnis with
Ms. Chaitali Sheth h/f. Mr. Amit Yadkikar
Advocate for respondent no. 4 : Mr. A.R. Vaidya
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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 28 JUNE 2024

ORDER (MANGESH S. PATIL, J.) :

We have heard both the sides finally at the stage of admission.

2. Petitioners who are the original borrowers, are seeking a *writ of certiorari*, questioning the legality and sustainability of the orders passed by the Debt Recovery Appellate Tribunal (**DRAT**), Mumbai dated 14-03-2024 and dated 12-04-2024 passed in I.A. No. 225 of 2024.

3. The minimum facts for deciding the present writ petition, can be summarized as under:-

(a) In the original proceeding initiated by respondent no. 2 – bank, possession of secured assets was taken over under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) by respondent no. 1 – authorized officer way back in the year 2011. The

secured assets were put to auction. Respondents no. 3 and 4 purchased different secured assets. Respondents no. 3 and 4 pursuant to such auction took possession of the secured assets in the year 2018.

(b) The petitioners – borrowers filed application under section 17 of the SARFAESI Act before the Debt Recovery Tribunal (**DRT**), Aurangabad being S.A. no. 98 of 2016, challenging legality and validity of the auction sale conducted on 08-11-2016 alleging fraud and violation of principles of fairness and transparency and for declaration that the sale certificate issued to respondent no. 3 under rule 9(6) of the SARFAESI Rules, 2011 be declared as null and void.

(c) After hearing the parties, by the judgment and order dated 02-01-2024, the DRT allowed the application and set aside the auction sale to the extent of the property sold to respondent no. 3 and directed restoration of its possession to the applicants – borrowers.

(d) In the light of the order passed by the DRT, the petitioner obtained possession of the property sold to respondent no. 3. Respondent no. 3 being aggrieved by the judgment and order of the DRT preferred appeal no. 22 of 2024 and preferred IA no. 225 of 2024 in that appeal seeking restoration of possession.

(e) By the order impugned in this petition, the DRAT stayed operation of the judgment and order passed by the DRT and further directed possession of the property to be restored to respondent no. 1 – authorized officer and he was granted liberty to hand it over to respondent no. 3 – purchaser as a receiver.

(f) DRAT also issued certain directions to the DRT for appointment of Advocate commissioner for taking inventory. Hence this petition.

4. Learned advocate for the petitioners would advert our attention to the order passed by the DRT on its Securitization Application and particularly the portions wherein observations were made to demonstrate that without following due process of law, the auction had taken place and basically the auction was conducted without issuing any notice under rule 8(6) to them. He would also advert our attention to the observations regarding the conduct of respondent no. 3 as also respondents no. 1 and 2 – authorized officer of the bank to demonstrate as to how they were acting hand in gloves with respondent no. 3 and there was misrepresentation, concealment of material facts. He would submit that such peculiar circumstances had weighed with the DRT in allowing the application and directing restoration of possession to the petitioners. He would submit that the

impugned order does not address to the reasoning assigned by the DRT.

5. The learned advocate would also submit that the impugned order is in the nature of granting petitioners a final relief and is not sustainable in law.

6. Per contra, learned advocate for respondents no. 1 and 2 would submit that possession of the secured assets was taken over under section 14 of the SARFAESI Act and irrespective of any dispute being raised by the petitioners – borrowers, even if the auction was set aside the logical and legal consequence was that the possession should have been continued with respondents no. 1 and 2 bank and its authorized officer. DRT had no power and jurisdiction even if the auction was set aside, to direct restoration of the secured assets to the borrowers. This has been noticed by the DRAT while granting stay and particularly directing the possession to be restored to respondent no. 1 – authorized officer. It is only by way of arrangement he has been allowed to restore possession to respondent no. 3 – purchaser that too in the capacity of receiver.

7. Mr. Sabnis, learned advocate for respondent no. 3 would submit that considering the limited scope of powers of this Court under

the writ jurisdiction, the discretion exercised by the DRAT may not be interfered with.

8. Learned advocate for respondent no. 3 - purchaser would support the order. He would submit that the issue regarding setting aside of auction is sub judice. The impugned order grants stay to the operation of the entire judgment and order of the DRAT. When respondent no. 3 by spending huge money has purchased the property in auction undertaken by respondents no.1 and 2, no fault can be found with the interim arrangement evolved by the DRAT by the impugned order.

9. Learned advocate for respondent no. 3 would submit that there was no question, even if the auction was to be set aside to restore the possession of the secured assets to the petitioners – borrowers. Still, they could by use of force, entered into the possession and in the peculiar circumstances, the DRAT had merely sought to restore the *status quo ante*, as was prevailing till the DRT decided the Securitization Application.

10. We have considered the rival submissions and perused the papers. There is no dispute about the fact that by resorting to section 14 of the Securitization Act, possession of the secured assets was taken over by respondent no. 1 way back in the year 2012. Even

there cannot be a dispute about the fact that the auction was conducted in the year 2016 by respondent no. 1 and obviously, the possession of the secured assets must have been handed over to respondents no. 3 and 4 of the respective assets.

11. The very fact that the DRT while deciding the Securitization Application, directed possession of the property purchased by respondent no. 3 to be handed over to the petitioners, is indicative of the fact that even it accepted the fact that the possession was with respondent no. 3.

12. There is also no dispute about the fact that subsequent to the decision of the Securitization Application no. 98 of 2016, the petitioners recovered possession with police assistance and were holding such possession.

13. It is in the light of the afore-mentioned sequence of events, in our considered view, no fault can be found with the impugned order of the DRAT in exercising the discretion of staying the operation of the judgment and order of the DRT and simultaneously, issuing directions to restore *status quo ante*. Precaution has also been taken to ensure that inventory is taken by Advocate commissioner, to be appointed by the DRT. It is also apparent that the fact that respondent no. 3 has

been in possession of the property purchased in E-auction for over 7 years, had weighed with the DRAT while passing the impugned order.

14. True it is that several aspects have been considered by the DRT in the order appealed against which have not been touched by the DRAT while passing the impugned order, as is being submitted by the learned advocate for the petitioners. However, one cannot lose sight of the fact that the interlocutory application was being decided, opportunity of being heard was being extended to both the sides and it is thereafter that the impugned order was passed by assigning plausible reasons. If there are certain circumstances in favour of the petitioners, there were / are few which can be considered as weighing against them as well, like absence of clear and precise pleadings in the Securitization Application disclosing as to how it was being preferred *ex facie* beyond the period of limitation and still the DRT could conclude it to be within limitation from the date of knowledge of fraud, that too without discussing it in detail.

15. With the limited jurisdiction available with this Court under Article 226 and 227 of the Constitution of India, in our considered view, by no stretch of imagination can it be said that the order passed by the DRAT suffers from any illegality.

16. The petition is dismissed.

17. At this juncture, the learned advocate for the petitioners requests for stay to the operation of this order for a reasonable period to enable the petitioners to approach the Supreme Court.

18. In the peculiar circumstances, operation of this order shall stand stayed for a period of four (4) weeks.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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