IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 623 OF 2024

Nitin Narayan Prakash Arora .. Petitioner

Versus

State Bank of India & Anr. .. Respondents

Adv. Mayur Khandeparkar a/w Shubhra Swami, Akshay Petkar and Vivek Punjabi for the Petitioner.

Adv. Charles D'souza a/w Padmakar Garad for Respondent No.1.

CORAM: B. P. COLABAWALLA & SOMASEKHAR SUNDARESAN, JJ.

DATE: FEBRUARY 26, 2024

P. C.

1. Leave to amend the cause title of the above Petition to add all the Appellants before the DRAT as the Petitioners in the present Petition. The amendment shall be carried out within a period of one week from today.

2. Though the above Writ Petition seeks various reliefs as more particularly set out in paragraph 60 of the Writ Petition, what is pressed before us is only a challenge to the order dated 4th January,

2024 passed by the DRAT in Interim Application No. 841 of 2023 in Appeal on Diary No. 2257 of 2023. This Interim Application was filed seeking a waiver of pre-deposit under Section 18 of the SARFAESI Act, 2002. By the impugned order, the Petitioners herein [the Appellants before the DRAT] were directed to deposit a sum of Rs. 50 crores as a condition precedent for entertaining their Appeal. This amount of Rs. 50 crores was to be deposited within a period of four weeks, namely, on or before 1st February, 2024.

3. The main argument canvassed before us by Mr. Khandeparkar, the learned Advocate appearing for the Petitioner, was that it is the specific case of the Appellants/Petitioners that the guarantees on which the 1st Respondent-Bank seeks to rely upon, and on the basis of which the pre-deposit amount is determined, is a forged and fabricated document. He submitted that in fact criminal proceedings have been initiated by the Appellants not only against the officers of the State Bank of Bikaner and Jaipur [SBBJ] who had originally sanctioned the loans, but also against the Directors of Respondent No.2 who have forged the signatures on the guarantees. He submitted that in fact when those persons applied for anticipatory bail, the same was not only rejected by the Sessions Court but also by this Court by prima facie recording a finding that the said guarantees are forged and fabricated. He submitted that this aspect of the matter has been lost sight of by the DRAT whilst determining the amount of pre-deposit. Mr. Khandeparkar submitted that prima facie if the guarantees are forged and/or fabricated, then under Section 18 of the SARFAESI Act, 2002, the amount of pre-deposit ought to have been determined on the basis of the value of the mortgaged property and not the entire debt. This, according to Mr. Khandeparkar, was because at the highest, if there is no guarantee, then the liability of the mortgagors [the Petitioners herein] would be the value of the mortgaged property and nothing more.

4. After going through the impugned order, we find that this aspect of the matter has not been gone into at all by the DRAT. The only thing the DRAT notes is the argument of the Appellants/Petitioners regarding the forgery and states that since this is an application for pre-deposit, it is not possible to go into those details. We are of the view that this is an argument that needs to be considered by the DRAT whilst determining the question of the amount of pre-deposit, especially taking into consideration the language of Section 18 of the SARFAESI Act, 2002 read with the definition of the word “borrower” in Section 2(1)(f) of the said Act. Since this is a factual exercise that would have to be

carried out by the DRAT and give its prima facie view on that aspect, we are of the opinion that it would be in the interest of justice, if the impugned order is set aside and the DRAT is directed to decide Interim Application No. 841 of 2023 in Appeal on Diary No. 2257 of 2023 afresh, after taking into consideration the argument of forgery and fabrication and giving its prima facie finding thereon.

5. We make it clear that we have not opined one way or the other, even prima facie, on the aspect of forgery. The issue of forgery shall be decided by the DRAT albeit on a prima facie basis, after hearing both sides and pass an appropriate order.

6. Mr. D'souza, the learned Counsel appearing for the 1st Respondent Bank, on instructions, has fairly stated that until the DRAT decides on the question of waiver of pre-deposit, the 1st Respondent Bank shall defer taking possession of the secured assets which form the subject matter of the present Petition. The said statement is accepted as an undertaking given to the Court. We clarify that the statement made by Mr. D'souza does not enure to the benefit of any other person on their secured assets, other than the Petitioners herein.

7. In light of our order passed today, the consequential order passed by the DRAT on 2nd February, 2024 dismissing Appeal on Diary No. 2257 of 2023 shall also stand set aside and the Appeal would be entertained subject to whatever conditions are imposed by the DRAT after hearing Interim Application No. 841 of 2023 afresh.

8. Considering that Interim Application No. 841 of 2023 is only an application for waiver of pre-deposit, we would request the DRAT to hear the waiver application afresh, as expeditiously as possible, and preferably within a period of four weeks from today.

9. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN,J.] **[B. P. COLABAWALLA, J.]**