IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3700 OF 2024

RB Wedding and Hotels Private Limited
A company registered under the provisions
of the Companies Act, 1956, having
CIN : U74120MH2013PTC241645 and
registered office at 2, Megh Apartment,
General Mhatre Marg, Juhu,
Mumbai – 400 049. .. Petitioner

Versus

1. Deutsche Bank,
   A Banking Company, having its address
   at Block B1 Nirlon Knowledge Park,
   Western Express Highway, Goregaon (E),
   Mumbai – 400 063.
2. Ms.Reshma J. Mutha
   having her office address at : 14, Old
   Oriental building, M.G. Road, Opp.
   Bombay High Court, Fort,
   Mumbai 400 001.
   Email : muthareshma@gmail.com ...Respondents

Mr.Ashish Kamat, Senior Advocate a/w. Gautam Sahni, Aviral Jain, Sukrit Parashar and Saanchi Dhulla i/b Vesta Legal, *Advocate for Petitioner.*

Mr.Saurish Shetye a/w. Mr.Ravi Goenka i/b Goenka Law Associates, *Advocate for Respondent No.1.*

Mr.Irshad Shaikh, *Authorized Officer of Respondent No.1 present in Court.*

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

DATE : MARCH 12, 2024.

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1. The above Writ Petition has been moved urgently in very peculiar circumstances. The Petitioner is the owner of Unit No. G-01A, Ground Floor, A-Wing, 'Parinee Crescenzo' Building, Gate No.3, G Block, Behind MCA Ground, BKC Road, Bandra -E, Mumbai 400051 bearing CTS No. 4207 of Kole Kalyan, Taluka Andheri, Behind MCA Ground, BKC Road, Bandra -E, Mumbai 400051 admeasuring 4688 sq.ft. carpet area and 3 car parking spaces (for short, the "***Secured Asset***").

2. On 30th April 2019, the Petitioner availed of a loan facility from the 1st Respondent-Bank for an amount of Rs.14,50,00,000/-. To secure this loan, a mortgage was created of the Secured Asset. Thereafter, on 1st February 2021, the Secured Asset was given on a Leave and License basis to one Origami Hospitality Private Limited and who is running a restaurant in the Secured Asset. On 5th April 2021, the Petitioner's loan account was classified as a Non-Performing Asset. Despite this, the 1st Respondent Bank, on 20th May 2021, issued a No Objection Certificate in favour of the Petitioner for letting out the Secured Asset to the licensee-

Origami Hospitality Private Limited.

3. Since the loan given by the 1st Respondent Bank was not paid, it issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") on 10th November 2021. Thereafter, symbolic possession of the Secured Asset was also taken under Section 13(4) of the SARFAESI Act. Taking the SARFAESI proceedings forward, the 1st Respondent Bank issued an auction sale notice scheduling the auction of the Secured Asset on 22nd August 2023 ("***the First Auction***").

4. To challenge the said actions of the 1st Respondent Bank, the Petitioner filed Securitization Application No.160 of 2023. In that Securitization Application, the Petitioner also filed an Interim Application being Interim Application No.2675 of 2023 seeking a stay of the First Auction. Interim Application No.2675 of 2023 was disposed by order dated 23rd August 2023 as the said auction had failed.

5. After the failure of the First Auction, it is the case of the Petitioner that they received a letter from the 1st Respondent-Bank dated 30th November 2023 informing the Petitioner that a fresh auction of the Secured Asset was conducted on 17th October 2023 ("***the Second***

Auction") and the Secured Asset was already sold. It is the grievance of the Petitioner that this auction was conducted contrary to the statutory rules, namely Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Accordingly, the Petitioner filed two Interim Applications before the Debt Recovery Tribunal-1, Mumbai (in the pending Securitization Application). Interim Application No.3436 of 2023 was for seeking amendments to the Securitization Application and Interim Application No. 3437 of 2023 was to set aside the sale of the Secured Asset conducted pursuant to the Second Auction. On these two Interim Applications, the DRT passed an order on 18th December 2023 recording the undertaking of Respondent No.1-Bank that it will give notice to the Petitioner before taking physical possession of the Secured Asset. Respondent No.1 was also directed to file its reply to Interim Application No. 3436 of 2023 and Interim Application No. 3437 of 2023.

6. It is the case of the Petitioner that despite the said undertaking, no notice of taking physical possession of the Secured Asset was served on the Petitioner. The Petitioner came to know that physical possession of the Secured Asset would be taken on 12th March 2024 at 12:00 p.m. on 1st March 2024 through its licensee. Accordingly, the Petitioner immediately, on 6th March 2024, filed Interim Application No. 517 of 2024 seeking a stay of taking physical possession of the Secured Asset.

This Interim Application was taken up for hearing on 7th March 2024 and 8th March 2024. On 8th March 2024, the arguments were concluded and the matter was reserved for orders to be passed on 11th March 2024. However, the concerned DRT was not sitting on 11th March 2024, and therefore, no orders were pronounced. Since there was no interim relief that was running in favour of the Petitioner, the Petitioner approached the Debt Recovery Appellate Tribunal seeking a stay on the possession subject to the outcome of Interim Application No. 517 of 2024. It is the case of the Petitioner that the DRAT refused to entertain the Petitioner because there was no order available which could be challenged before the DRAT. It is in these circumstances that the present Petition is filed seeking urgent relief of stay on possession of the Secured Asset till the disposal of Interim Application No. 517 of 2024.

7. After we heard Mr.Kamat, the learned Senior Counsel appearing on behalf of the Petitioner as well as Mr.Shetye, the learned Counsel appearing on behalf of the 1st Respondent Bank for some time, we enquired with the 1st Respondent Bank, whether they were willing to defer the taking of the physical possession of the Secured Asset till Interim Application No.517 of 2024 is decided and, if it is adverse to the Petitioner, for a period of one week thereafter. Mr.Shetye, on taking instructions from the Authorised Officer of the 1st Respondent Bank, who

is present in Court, stated that the 1st Respondent Bank shall defer to take physical possession of the Secured Asset until Interim Application No.517 of 2024 is decided and the order is passed. Mr.Shetye, on instructions, further stated that in the event the order is adverse to the Petitioner, they shall not take physical possession for a period of one week from the date the order is passed and uploaded by the DRT in Interim Application No. 517 of 2024.

8. Once this is the statement made on behalf of the 1st Respondent Bank, we find that the grievance raised in the above Petition is fully redressed.

9. We also find that Interim Application No.3437 of 2023, and which is an Interim Application filed by the Petitioner seeking to set aside the sale/Second Auction conducted by the 1st Respondent Bank is pending adjudication since December 2023. No reply has been filed to the said Interim Application by the 1st Respondent Bank. Further, we are informed that the 1st Respondent Bank has not filed any reply to Interim Application No.3436 of 2023 either. We, therefore, direct the 1st Respondent Bank to file its affidavit in reply to Interim Application No. 3436 of 2023 and 3437 of 2023 within a period of two weeks from today and serve a copy of the same on the Advocates for the Petitioner. The

Petitioner herein (Applicant before the DRT) are free to file their affidavit in rejoinder, if any, within a period of one week from the date of service of the affidavit in reply.

10. The DRT is requested to hear and decide Interim Application No. 3436 of 2023 and Interim Application No.3437 of 2023 within a period of eight weeks from today.

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

12. We may hasten to say that we have not opined on the merits of the matter one way or the other and the same shall be decided by the DRT and/or DRAT as and when the occasion arises, in accordance with law.

13. 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.]**