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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5959 OF 2024

Tourism Finance Corporation of India Limited .. Petitioner

Versus

Aishwarya Chetan Khedkar Nee Aishwarya
Sanjay Mali and ors. .. Respondents

.....

- Mr.Vinod Kothari a/w Ms.Sonal Sanap i/b Apex Law Partners, for Petitioner.
- Mr.Amol Wagh a/w Mr.Rishabh Tiwari i/b Mr.Sagar Kasar, for Respondent No.1.
- Mr. P. V. Nelson Rajan, AGP for Respondents No. 6 and 7.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 16, 2024

P. C.:

- 1.** Heard learned counsel for the parties.
- 2.** On 15/03/2024, after hearing the Petitioner, the following order was passed.

“ 1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 15.03.2024. Heard Mr. Samantray, learned Advocate for Petitioner.

3. Impugned order dated 15.12.2023 which is at Exh. “1”, page Nos. 37-38 of the Petition on the face of record, prima facie appears to be incorrectly passed while referring to Section 101 of the SARFAESI Act. Petitioner (Org. Defendant No. 5) is aggrieved with the said order since the suit property was mortgaged to Defendant No. 5.

4. Mr. Samantray would inform the Court that this order came to be passed on the day of holding of

auction by Defendant No. 5 and Defendant No. 5 was therefore compelled to withhold the auction. He would submit that entire action under the SARFAESI Act has been completed and sale of the suit property mortgaged to Defendant No. 5 by public auction remains outstanding.

5. An arguable case is made out by Mr. Samantray for issuance of notice and calling for reply from Respondents.

6. Issue notice to the Respondents made returnable on 22.03.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

8. Stand over to 22nd March, 2024.”

3. Pursuant to the directions contained in that order, learned District Court heard Miscellaneous Civil Appeal No. 47 of 2023 against the challenge to the interim order below Exhibit 5. Once that challenge has been rejected by the learned District Court, cause of action in the present Writ Petition does not survive. In view of the learned District Court refusing extension of status-quo, the order

passed below Exhibit 5 dated 15/12/2023 which is the subject matter of the present Writ Petition has been rendered infructuous.

4. In that view of the matter, the Writ Petition No. 5959 of 2024 is allowed to be withdrawn by consent of the parties.

5. All contentions of both the parties before the learned District Court are expressly kept open in the Miscellaneous Civil Appeal.

6. The Writ Petition is disposed of as withdrawn in the above terms.