

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6375 OF 2024

Mr Rajmohan N. Rao

..Petitioner

Versus

Bank of Maharashtra & Ors

..Respondents

ANJALI
TUSHAR
ASWALE

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***Mr. Charles D'souza with Ms.Manaswi Agrawal,
Sharanya Shivaraman, Advocates for the Petitioner.***

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**
DATE : APRIL 30, 2024

P.C.

The above Writ Petition is filed challenging the impugned order dated 26th April, 2023 passed by the DRAT in Appeal Nos.83 of 2009 and 115 of 2009.

2 It is the case of the Petitioner that the subject property of the present Petition was originally agreed to be transferred along with the business of the Petitioner to Respondent No.5 [the borrower] by two Agreements dated 10th April, 1972 and 27th April, 1972. This transfer ultimately did not fructify because the disputes arose between the Petitioner and Respondent No.5. Since the

Petitioner had received part consideration under the aforesaid Agreements, he had put Respondent No.5 in possession of Unit No.515, Bharat Industrial Estate, 5th Floor, Jivraj Tokeral Road, Sewree, Mumbai 400 015 (for short “***the Suit Property***”).

3 Since disputes arose, according to the Petitioner, the Petitioner was put back in possession of the Suit Property and has been in possession since January 2001. Since a Recovery Certificate was issued against the borrowers, namely, Respondent No.5, in recovery proceedings, the Recovery Officer attached the suit property on the basis that it belongs to Respondent No.5. This was challenged by the Petitioner before the Recovery Officer. The Recovery Officer, by his order dated 3rd July, 2007, refused to lift the attachment and dismissed the application filed by the Petitioner.

4 Being aggrieved by this order of the Recovery Officer (3rd July , 2007), the Petitioner preferred an Appeal under Section 30 of the RDB Act, 1993 before the learned Presiding Officer. After hearing the parties, the learned Presiding Officer set aside the order passed by the Recovery Officer, and raised the attachment

levied on the suit property. This was done by the Presiding Officer vide his order dated 13th October, 2008.

5 Being aggrieved by the order of the Presiding Officer, the 1st Respondent Bank as well as the borrowers preferred two separate Appeals, being Appeal Nos.115 of 2009 and 83 of 2009 before the DRAT. These Appeals came to be allowed by the DRAT vide its order dated 26th April 2023, and which is impugned in the present Writ Petition. Pursuant to the order passed by the DRAT, and which reinstates the attachment levied by the Recovery Officer, he has proceeded to appoint a Receiver on the suit property [vide order dated 16th January, 2024], and by order dated 28th February, 2024 directed that physical possession of the suit property be taken by breaking open the locks, by following the procedure and in accordance with law.

6 The orders passed by the Recovery Officer on 16th January, 2024 read with the order dated 28th February, 2024 are also impugned in the present Writ Petition.

7 We have heard Mr. D'souza at some length. Considering that the above matter is coming up for the first time,

we direct the Registry to issue notice to the Respondents returnable on 18th June, 2024. Hamdast permitted. In addition to the Court notice, the Petitioner is permitted to serve the Respondents with the papers and proceedings in the above Writ Petition by private notice as well.

8 Mr.D'souza has pointed out that though legal possession of the suit property is with the Petitioner, he has let out the suit property on a leave and license basis to one Suresh Vichare who is in occupation of the suit property. Having heard Mr.D'souza on the grant of ad-interim relief, we direct that until the next date, and without prejudice to the rights and contentions of all parties, the Receiver appointed by the Recovery Officer shall not physically dispossess the Petitioner or the licensee [Mr.Vichare] from the Suit property. We, however, clarify that he shall continue as the Receiver of the Suit Property and the occupation of the suit property by the Petitioner or the licensee [Mr.Vichare] will be strictly as the Agent of the said Receiver.

9 Stand over to 18th June, 2024 for ad-interim reliefs.

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.]