IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10102 OF 2024

Haresh Mohanlal Mehta ..... Petitioner

VERSUS

Capri Global Capital Ltd. & Ors. ..... Respondents

Mr. Karl Tamboly a/w. Mr. Prerak Sharma, Mr. Vaibhav S. Kulkarni for the Petitioner.

Mr. Ravi Kadam, Senior Advocate a/w. Mr. Dinesh Purandare, Mr. Vishal Maheshwari, Mr. Mihir Beradia i/b. VM Legal for the Respondent No.1.

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 17th OCTOBER, 2024

P.C. :-

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, challenging the order dated 18th July 2024 passed by the Debts Recovery Appellate Tribunal, Mumbai ("DRAT" for short) in Miscellaneous Application No.297 of 2024 (for Stay) in Securitisation Appeal No.28 of 2024. The said Securitisation Appeal before the DRAT was filed under Section 18 of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, (for short "SARFAESI Act"), which challenged to the order dated 10th January 2024 dismissing the Securitisation Application (for short "SA") filed by the petitioner.

2. The petitioner claims to be in possession of Flat No. 802 situated at 8th Floor, Shanta Shivam CHS, 8-8A, Babulnath Road, Near Babulnath Temple, Mumbai – 400 007 (for short '*the said flat*') from 2005 under an oral agreement linked with Memorandum of Undertaking (for short 'MOU') dated 16th July 2009.

3. The petitioner had challenged the proceedings initiated by the respondent no.1/secured creditors under the provisions of SARFAESI Act in respect of the alleged loan facilities granted to the respondent nos. 3 to 5. The petitioner's case is that he was not aware of any loan transaction of the respondent nos. 3 to 5, over *the said flat*.

4. It is the case of the petitioner that on 15th July 2019 one Mr. Vinod Singh, claiming to be the Court Receiver visited the *said flat* when the petitioner's wife was present in the *said flat* and upon enquiry, Mr. Vinod Singh informed them that he is been appointed as the Court Receiver to take possession of the *said flat*. Hence, the petitioner later on visited the Magistrate's Court and made enquiry about the pending cases in the name of respondent no.3. There he found that the respondent no.1 has already initiated proceedings under section 14 of the SARFAESI Act against the respondent no.3 and one of his subsidiary companies i.e. the respondent nos.4 and 5. Upon enquiry, he received documents from the Chief Metropolitan Magistrate and the petitioner realized that the respondent no.5 has mortgaged the *said flat* in favour of the respondent no.1. Hence, the petitioner was constrained to file a civil suit in this Court at its Original Side, being Civil Suit (L) No. 906 of 2019 thereby seeking specific performance of agreement i.e. MOU. So also the petitioner preferred Notice of Motion No. 2005 of 2019, seeking

urgent reliefs therein.

5. It is also the case of the petitioner that the notice dated 13th November 2018 was issued under Section 13(4) of the SARFAESI Act to the Official Liquidator and not to the borrower which is the mandatory requirement of law. It is also the case of the petitioner that there is no mention of the disbursement of the loan amount in the said notice. Hence, being aggrieved and dissatisfied with the notice issued under Section 13(4) and order dated 5th July 2019 passed by the Chief Metropolitan Magistrate and warrant of attachment issued by the Commissioner for taking physical possession of the *said flat*, the petitioner approached the Debts Recovery Tribunal, Mumbai by filing Securitisation Application No. 304 of 2019 alongwith interim application for stay. The Debts Recovery Tribunal by its judgment and order dated 16th October 2019 has rejected the interim application for stay filed by the petitioner.

6. Being aggrieved by the said judgment and order dated 16th

October 2019, the petitioner approached the Debts Recovery Appellate Tribunal, Mumbai and filed Misc. Appeal being No. 68 of 2019. In the said Misc. Appeal, the petitioner has preferred application under Section 13(8) of the SARFAESI Act thereby intending to redeem the mortgage flat and by paying the entire outstanding amount. The said application was opposed by the respondent no.1. The DRAT by its order dated 14th July 2023 without going into the merits of the matter, remanded back the same to the DRT to reconsider the same. In the said order DRAT stated that the amount deposited by the petitioner before them should be transferred to the DRT, Mumbai and the order of status quo passed by them shall continue till the disposal of the securitisation application.

7. Accordingly, the matter was again heard before DRT, Mumbai and in the said proceedings respondent no.4 appeared and filed its reply and the matter proceeded ex-parte against the remaining respondents. After reconsidering the matter, DRT, Mumbai by its judgment and order dated 10th January 2024

dismissed the said SA filed by the petitioner.

8. Being aggrieved and dissatisfied by the said judgment and order dated 10th January 2024, the petitioner preferred an Appeal before the DRAT, Mumbai being Securitisation Appeal No. 28 of 2024 alongwith one Misc. Application No. 297 of 2024 for stay and Misc. Application No. 1262 of 2024 for amendment.

9. It is the case of the petitioner that the Chief Metropolitan Magistrate issued execution warrant being No. 228 of 2024 in 624/MISC/2014 in Case No. 288/SA/2019 to be executed on 10th July 2024. On petitioner's request, 10th July 2024, DRAT heard the matter and directed not to take any coercive steps and the matter was adjourned to 18th July 2024. Thereafter on 18th July 2024, DRAT heard both the parties and by its impugned order dismissed the appeal.

10. Being aggrieved by the order dated 18th July 2024 passed by the DRAT, Mumbai, the present writ petition has been filed by

the petitioner.

11. Mr. Karl Tamboly, learned counsel appeared on behalf of the petitioner and made his submissions :-

He submitted that the substantial question of law is involved in the present petition whether the secured creditor is entitled to recover an outstanding amount mentioned in the 13(2) notice under SARFAESI Act when the notice dated 13th November 2018 for recovery of an outstanding amount of Rs.1,23,25,869/- alongwith interest is claimed. He submitted that the petitioner is having "settled possession" of the *said flat* and his possession was never questioned earlier. So also it was known to the respondent no.1 that the said suit flat was in the possession of the petitioner as he had knowledge about the loan agreement dated 28th November 2017. Mr.Tamboly also submitted that the notice dated 13th November 2018 was issued under Section 13(4) of the SARFAESI Act was served to the Official Liquidator and not to the borrower which is the mandatory requirement of law. He relied upon the judgment of Supreme Court in case of *United Bank of India vs. Satyawati Tondon* reported in *(2010) 8 SCC 110.*

12. Mr. Kadam, learned Senior Advocate appeared on behalf of the respondent no.1/Financial Institution. He submitted that the petitioner's case is based on unregistered MOU and on oral agreement. He submitted that the case of the petitioner is disbelieved by the DRT and DRAT. There are concurrent findings against the petitioner, therefore, this Court shall not entertain the writ petition.

13. We have heard learned counsel for both the parties and with their assistance, have gone through the documents on record. The 5th respondent company (Orbit Residency Pvt. Ltd.) had purchased the *said flat* from the earlier owner one Sekseria Family, vide registered Sale Deed dated 24th December 2009. The petitioner is claiming his interest in the subject flat vide MOU dated 16th July 2009 executed in his favour by the respondent

nos.3 and 4, who are not the owners of the subject flat. The petitioner has filed a civil suit for specific performance in this Court being Suit (L) No. 906 of 2019. However, there are no interim orders passed in favour of the petitioner in the said civil suit.

14. The respondent no.1 financial institution had granted a term loan of Rs.1.10 crore to the respondent no.4 company (under liquidation) and its subsidiary company, the 5th respondent. Pursuant to which the subject flat was mortgaged in favour of the respondent no.1/financial institution on 28th November 2017. Since there was default in repayment of the loan amount, the act of the borrower was classified as NPA, on 31st July 2018. Thereafter, the demand notice was issued under Section 13(2) of the SARFAESI Act as the borrower failed to comply with the demand notice. The Chief Metropolitan Magistrate passed an order under Section 14 of the SARFAESI Act on 15th July 2019. The said order passed by the Chief Metropolitan Magistrate on 15th July 2019, was challenged by the

present petitioner by way of securitisation application under Section 17 of the SARFAESI Act. The Debts Recovery Tribunal, Mumbai, after hearing the petitioner by its order dated 10th January 2024 dismissed the securitisation application of the petitioner. Hence, the petitioner filed Securitisation Appeal No. 28 of 2024 before the Debts Recovery Appellate Tribunal, Mumbai.

15. The MOU dated 16th July 2009 is on the stamp paper of Rs.100/- and is not a registered document. The petitioner was not able to prove that he is in possession of the subject flat from 2005. The petitioner has not obtained any interim relief in his suit for specific performance. The petitioner has come with the case that on the basis of the oral arrangement, he was put up in possession of the subject flat. The petitioner is neither a borrower nor a guarantor nor *prima-facie*, a *bonafide* purchaser for value. The Debts Recovery Appellate Tribunal has also disbelieved the case of the petitioner and has arrived at a finding that the petitioner does not fall within the definition "Aggrieved

Person" as defined under Section 17(1) of the SARFAESI Act. The petitioner is claiming his interest in the said flat pursuant to MOU entered into with the respondent nos. 3 and 4, who are not owners of the *said flat*. Hence, the judgment of Supreme Court in case of *United Bank of India* (supra) does not help the petitioner. Since, in that case it was the guarantor whose property was mortgaged challenging the action of Bank, by way of writ petition, without availing the remedy under Section 17 of the SARFAESI Act.

16. Hence, we are of the view that no case is made out to entertain the present Writ Petition under Articles 226 and 227 of the Constitution of India. The same is dismissed with no costs.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**