

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.19402 OF 2024

- | | | |
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| 1. Mr. Shriniwas Ramdas Dubas, |] | |
| Proprietor of M/s. Shriniwas Ramdas Dubas |] | |
| Having address at Plot No.129 MIDC, |] | |
| Akkalkot Road, Solapur – 413 006. |] | |
| 2. Mrs. Meera Shriniwas Dubas |] | |
| R/at Plot No.129 MIDC, |] | |
| Akkalkot Road, Solapur – 413 006. |] | .. Petitioners |

Versus

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|--------------------------------------|---|-----------------------|
| 1. Bank of Maharashtra, |] | |
| Having Head Office at Jule Solapur, |] | |
| Solapur – 413 005. |] | |
| Having Branch Office at Ashok Chowk, |] | |
| Solapur – 413005. |] | |
| 2. The Authorised Officer, |] | |
| Bank of Maharashtra, |] | |
| Having Branch Office at Ashok Chowk, |] | |
| Solapur – 413 006. |] | .. Respondents |

Mr. Mandar Soman with Mr. Amarnath Boddul, Advocates for the Petitioners.

Mr. Subir Kumar with Mr. Valentine Mascarenhas, Advocates for the Respondents.

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ**

DATE : 11TH MARCH 2025.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The challenge raised in this writ petition is to the order dated 20th December 2024 passed by the learned Incharge Presiding Officer,

Debts Recovery Tribunal, Pune, having Camp at Nagpur, by which Interim Application No.3124 of 2024 (*incorrectly mentioned as Interim Application No.3126 of 2024*) came to be disposed of as infructuous.

2. The learned counsel for the petitioners invited attention to the prayers made in Interim Application No.3124 of 2024 and submitted that besides seeking stay of the execution of the notice issued by the Court Commissioner on 6th December 2024 seeking to take possession of the secured asset, there were other prayers made in the interim application including one for restoration of possession in case it was found that the possession was illegally taken. Without considering the entire interim application and only by considering the pursis filed by the respondents stating that possession of the secured asset was taken, the interim application was disposed of as infructuous. It is thus submitted that in breach of principles of natural justice and without considering all the prayers made in the interim application, it has been disposed of as infructuous. Requiring the petitioners to avail the statutory remedy of approaching the Debts Recovery Appellate Tribunal in this regard would be onerous for the reason that the petitioners would be required to challenge an order that did not even consider the prayers made in the interim application. He therefore seeks to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution of India.

3. Per contra, the learned counsel appearing for respondent no.1 raised an objection to the maintainability of the writ petition as the remedy of challenging the impugned order by approaching the Debts Recovery Appellate Tribunal was available. According to him, without invoking such remedy the petitioner has approached this Court. There was no exceptional case made out warranting interference. Since the Securitisation Application preferred by the petitioners was pending, the prayers that remained undecided in the interim application could be decided in the Securitisation Application. He therefore submits that the interim application was rightly disposed of as infructuous.

4. Having heard the learned counsel for the parties and having perused the documents on record, we are inclined to exercise discretion in favour of the petitioners and entertain the writ petition. In Interim Application No.3124 of 2024, the following prayers were made :

“16. Therefore, it is most humbly prayed that,

- (a) The present application may kindly be allowed.
- (b) The Hon’ble DRT may kindly stay the implication and execution of the notice issued by the Court Commissioner dated December 06, 2024.
- (c) The Hon’ble DRT may kindly stay implication and execution of all the section 13(2) notices till the present matter is disposed off.

- (d) The Hon'ble DRT may kindly stay implication and execution of all the section 13(4) notices till the present matter is disposed off.
- (e) The Hon'ble Tribunal may be pleased to quash and set aside the order passed by the Chief Judicial Magistrate, Solapur dated November 16, 2024.
- (f) The Hon'ble Tribunal may be pleased to declare that no valid security interest is created by the Defendants in the alleged mortgaged property mentioned in the schedules of main SA, till the final disposal of the present matter.
- (g) The Hon'ble Tribunal may kindly immediately restore the possession of the properties mentioned in the Schedule hereinbelow, if the possession of the property mentioned in Schedule of main is taken illegally.
- (h) This Hon'ble Tribunal may kindly award to the applicants the costs for filing of the present IA along with Advocate fees from the defendant.
- (i) Any other just and equitable orders in the interest of justice may kindly be passed."

5. When Interim Application No.3124 of 2024 was considered on 20th December 2024, the learned Incharge Presiding Officer passed the following order :-

20.12.2024

HEARING THROUGH VC.

I.A. No.3126/2024

The Ld. Counsel for both sides are present.

The Ld. Counsel for the respondent had submitted Pursis mentioning therein

outstanding loan amount as on date and has filed panchanama with regard to taking possession of the secured asset in view of the possession notice issued by the Court Commissioner, Solapur dated 06.12.2024.

In that view of the matter, I.A. No.3126/2024 (incorrectly mentioned as I.A. No.3124/2024) is hereby disposed of as being infructuous.

Call explanation from the concerned Court Commissioner why he has taken possession of the secured asset when the matter was being heard and sub-judice before this Tribunal.

Put up submission of report by the concerned Court Commissioner and completion of pleadings before Registrar on 10.02.2025”

6. Perusal of Interim Application No.3124 of 2024 (*incorrectly mentioned as I.A. No.3126/2024*) and the impugned order passed thereon would indicate that besides seeking stay to the implementation and execution of the notice issued by the Court Commissioner proposing to take over possession, prayer clauses (f) and (g) sought adjudication as to whether a valid security interest was created in the mortgaged property and restoration of possession of the properties, if the same was illegally taken, was prayed for. It is evident from the impugned order that only by accepting the pursis filed by the respondent-Bank that possession has been

taken; the interim application in its entirety has thus disposed as infructuous. There is no consideration of prayer clauses (f) and (g) in Interim Application No.3124 of 2024. It would have been a different matter if after considering the aforesaid prayers, the interim application would have been rejected. That however is not the case. It is thus obvious from the record that the learned Incharge Presiding Officer did not consider the interim application with all its prayers.

The matter can be seen from another angle. The learned Incharge Presiding Officer had called for explanation from the concerned Court Commissioner as to why possession was taken when the matter was subjudice before the Tribunal. This would indicate, prima facie, that a grievance was raised with regard to illegal manner in which possession was taken. If those observations are seen in the context of prayer clause (g) of the Interim Application No.3124 of 2024 (*incorrectly mentioned as I.A. No.3126/2024*), it becomes clear that the petitioners were seeking restoration of possession taken illegally. It was therefore necessary for the Tribunal to have at-least considered the said prayers on their own merits. Without doing so, the entire application has been dismissed as infructuous.

7. It is no doubt true that an alternate remedy of approaching the Debts Recovery Appellate Tribunal is available. However, only on that

count the writ petition cannot be held to be not maintainable. We further find that the petitioners have made out an exceptional case indicating non-consideration of the entire application on merits, thus resulting in breach of principles of natural justice. We find that this is a fit case for this Court to exercise discretion under Article 226 of the Constitution of India.

8. For aforesaid reasons, the writ petition is allowed in terms of prayer clause (J), which reads as under :-

“(J) This Hon’ble High Court may be pleased to set aside the order dated 20th December 2024 passed by the DRT, Pune and may direct the Hon’ble DRT Pune to hear Interim Application No.3124 of 2024 (*incorrectly mentioned as Interim Application No.3126 of 2024*) for restoration filed by the petitioners may be heard at the earliest.”

9. The interim application shall be considered and decided on its own merits and in accordance with law. The observations made in this order are only for the purposes of adjudicating the challenge to the impugned order. It is clarified that this Court has not considered the other prayers made in the writ petition and all issues in that regard are kept open. Rule is made absolute in the above terms.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]