IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13377 OF 2024

Mahendra Sridhar Attarde }
Aged about 52 years, }
Adult, Indian Inhabitant, residing at Flat }
No.702, Shiv Siddhi Lok Kailash C. H. S. L, }
J.S.D. Road, Mulund-West-400 080. }

.. Petitioner

Versus

1. The State of Maharashtra, to be served }
Through Government Pleader, High Court, }
Mumbai }

2. Swagat Housing Finance Company Ltd. }
A company registered under the provisions of }
Section 29A having office at A-1/207, Laram }
Centre, S. V. Road, Andheri-West-400 058. }

3. Mrs. Rekha Narayan Thakker }

4. Mrs. Ansuya Narayan Thakker, }
both Adults, Indian inhabitants, having address }
at 29, 3rd floor, Shree Ram Niwas, Kisan Nagar 1, }
Mulund Check Naka-Thane-West-400 604 }

.. Respondents

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Mr. A.M. Saraogi, Advocate for the Petitioner.
Mr.N.K. Rajpurohit, Assistant Government Pleader for Respondent No.1.
Mr. Sanjay Anabhawane, Advocate for Respondent No.2.
Mr. Suresh Dubey, Advocate for Respondent Nos.3 and 4.

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

DATE : 4TH FEBRUARY 2025.

ORAL JUDGMENT :(A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The petitioner is aggrieved by the order dated 21/08/2024 passed by the learned Chairperson, Debts Recover Appellate Tribunal, Mumbai (for short, 'DRAT') in Appeal No.78 of 2022. By the said order, while dismissing the appeal preferred by the petitioner wherein challenge was raised to the order dated 09/02/2021 passed by the learned Presiding Officer, Debts Recovery Tribunal, Mumbai, (for short, 'DRT') directions in favour of respondent no.2-Finance Company were issued without the order of the DRT being challenged by it.

2. The petitioner claims to be an unpaid seller pursuant to an agreement dated 08/01/2015 entered into with respondent nos.3 and 4. Securitization Application No.21 of 2020 was filed by the petitioner questioning the measures initiated by the Finance Company under provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'Act of 2002') for recovering the dues from respondent nos.3 and 4. The learned Presiding Officer of the Tribunal held that the measures taken by the Finance Company under Section 13(4) of the Act of 2002 were not in accordance with

the provisions of the Act of 2002. Considering the rights of the petitioner as an unpaid seller, the petitioner was directed to file an undertaking that he would not alienate the subject property or create any third party rights therein. The Finance Company was directed to restore physical possession of the subject premises to the petitioner within a period of two weeks. On aforesaid terms Securitization Application No.21 of 2020 was allowed.

3. The petitioner being aggrieved by the direction to furnish an undertaking preferred an appeal before the DRAT. The order dated 09/02/2021 passed by the DRT was not challenged by the Finance Company. By the impugned order, the learned Chairperson while holding that the petitioner was estopped from challenging the measures taken under Section 17 of the Act of 2002 also set aside the directions issued to the Finance Company to restore possession.

4. Having heard the learned counsel for the parties we are of the view that the impugned order dated 21/08/2024 passed by the DRAT is liable to be set aside on the short ground that directions issued in favour of the petitioner by the DRT not having being challenged by the Finance Company, the same could not

have been set aside in the appeal preferred by the petitioner. It is not in dispute that it was only the petitioner who challenged the order dated 09/02/2021 passed by the DRT. The petitioner was directed to furnish an undertaking by the DRT and the Finance Company was directed to restore possession of the subject flat to the petitioner. While dismissing the petitioner's appeal, the petitioner could not have been placed in a worse position than he was when the DRT decided the Securitization Application. A direction issued in his favour by the DRT could not have been set aside in his appeal by the DRAT. On this short ground, the impugned order is liable to be set aside and the appeal preferred by the petitioner ought to be re-considered on merits.

5. For aforesaid reasons, the following order is passed :-

(a) The order dated 21/08/2024 passed by the learned Chairperson, Debts Recovery Appellate Tribunal in Appeal No.78 of 2022 is set aside. The proceedings are remanded to the Debts Recovery Appellate Tribunal for re-consideration.

(b) As an interim measure and without prejudice to the rights and contentions of either parties, subject to the petitioner depositing an amount of Rs.10 lakhs by way of security before the Debts Recovery Appellate Tribunal, the possession of

Flat No.706, A-2, Shiv Siddhi Lok Kailas Co-op. Housing Society Ltd., Mulund (West), Mumbai shall be restored to the petitioner subject to final outcome of the appeal. The petitioner however shall not create any third party rights in the aforesaid property till the appeal is decided afresh. On the petitioner depositing the aforesaid amount of Rs.10 lakhs with the Debts Recovery Appellate Tribunal, respondent no.2 shall within a period of one week from such deposit, restore possession of the aforesaid flat to the petitioner.

(c) It is made clear that all other remedies of either parties are kept open for being availed of, if so advised.

6. Rule is made absolute in aforesaid terms with no order as to costs.

[M.M. SATHAYE, J.] **[A.S. CHANDURKAR, J.]**