IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3319 OF 2025

K.C. Industries and Ors. .. Petitioners
Vs.
Bank of Baroda and Ors. .. Respondents

Mr. Mayur Khandeparkar with Mr. Anand Pai, Mr. Arun Panickar, Mr. Rahul Kedar, Mr. Ativ Patel, Ms. Viloma Shah, Mr. Harshad R. Vyas and Mr. Viraj Raiyani, Advocates, i/by AVP Partners, for the Petitioners.

Mr. Cyrus Ardeshir, Senior Advocate, with Ms. Savita Nangare, Mr. Vinod Nagula, Ms. Disha Shah and Ms. Alessandra Shorff, Advocates, i/by Blaw Focus, for Respondent No.1.

Mr. Ronak Shah with Mr. Jay Mehta, Advocates for Respondent No.2.

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

DATE : 5TH MARCH 2025.

P.C. :

1. The draft amendment tendered is allowed. The amendment be carried out forthwith.

2. The challenge raised in this writ petition is to the order dated 12th February 2025 passed by the learned Presiding Officer, Debts Recovery Tribunal, Pune. By the said order the interim application preferred by the petitioner no.1 seeking to restrain the Court Commissioner from taking possession of the secured asset on 13th February 2025 came to be dismissed.

3. At the outset, the learned Senior Advocate for the respondent no.1-Bank raised a preliminary objection to the maintainability of the writ petition on the ground that after the order dated 12th February 2025 was passed by the learned Presiding Officer, the petitioners on the same day moved an interim application as under :-

> "The applicants pray that the possession scheduled on 13.02.2025 vide order of CJM at the hands of Court Commissioner be stayed and / or status-quo may be granted against defendant no.1-Bank till appeal period.
>
> The applicant therefore prays :-
>
> (a) That the possession scheduled on 13.02.2025 vide order of CJM at the hands of Court Commissioner be stayed and / or status-quo may be granted against defendant no.1-Bank till appeal period.
>
> (b) For such further and other reliefs as the case may require."

4. The learned Presiding Officer after hearing both parties passed the following order on 12th February 2025 :-

> "Read the Application and Say. Heard all parties. The applicants have right to file appeal against impugned order but subject to deposit of some amount. Hence the following order :
>
> ORDER
>
> Stay for execution of order passed today below I.A. No.435/2025 till appeal period is over subject to applicants deposit 10% of Demand Notice amount within a week. In default, stay shall be automatically vacated."

5. It is thus submitted that after obtaining time of one week from the Debts Recovery Tribunal, the petitioners failed to avail the remedy of appeal before the Debts Recovery Appellate Tribunal. After expiry of the period of one week, they have thereafter approached this Court by filing the writ petition on 3rd March 2025. In view of the liberty granted by order dated 12th February 2025 which was not availed, it is submitted that the writ petition is not maintainable.

6. To overcome this preliminary objection, the learned counsel for the petitioners submitted that notwithstanding the aforesaid order it was open for the petitioners to maintain this writ petition on the settled principles applicable as availability of an alternate remedy would not bar invocation of the jurisdiction under Article 226 of the Constitution of India in an exceptional case. It was also urged that deposit of 50% of the amount due for maintaining an appeal under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was onerous and in the facts of the present case, discretion be exercised in favour of the petitioners. In that regard, reliance was placed on the decisions in *Himmatlal Harilal Mehta Vs. State of Madhya Pradesh and Ors., (1954) 5 STC 115, PHR Invent Educational Society Vs. UCO Bank and Ors., (2024) 245 Company Cases 80* and *Tamil Nadu Cements Corporation Ltd. Vs. Micro and Small Enterprises Facilitation Council and*

Anr., 2025 SCC OnLine SC 127 to contend that the writ petition deserves to be entertained.

7. We may state here that when we suggested to the learned counsel for the petitioners that as a condition for considering the request for entertaining the writ petition, the petitioners ought to at-least comply with the direction issued by the Debts Recovery Tribunal to deposit 10% of the Demand Notice amount while granting interim protection for a period of one week, on instructions, the learned counsel for the petitioners expressed inability of the petitioners to do so.

8. Be that as it may, we have considered the submissions urged on behalf of the petitioners. The learned counsel for the petitioners by referring to paragraph 37 of the judgment in *PHR Invent Educational Society (supra)* contends that the Debts Recovery Tribunal did not act in accordance with the provisions of the Act of 2002 and denied relief notwithstanding the fact that the Bank was unable to produce the Mortgage Deed on the basis of which it had proceeded against the petitioners.

There is no dispute with regard to maintainability of the writ petition. The only question is the aspect of entertainability as held by the Supreme Court in *M/s. Godrej Sara Lee Ltd. Vs. The Excise and Taxation*

Officer-cum-Assessing Authority and Ors., 2023 INSC 92. Firstly, in the writ petition there is no averment made that after the Debts Recovery Tribunal passed the order on the interim application on 12th February 2025, a request was made for grant of time to prefer an appeal. Such application having been made by the petitioner no.1 and granted by the Debts Recovery Tribunal, the least that was expected was a fair disclosure of the aforesaid aspect in the writ petition along with the order passed on the interim application, which is conspicuously missing. Secondly, for considering the bonafides of the petitioners, a deposit of 10% of the Demand Notice amount, as directed by the Debts Recovery Tribunal was sought. The petitioners have declined to do so.

9. Additionally, in our view the grounds raised by the petitioners touch the merits of the adjudication by the Debts Recovery Tribunal. It is not the case that the impugned order has been passed in breach of principles of natural justice. The impugned order may be erroneous in nature or may have been passed without due consideration of certain legal principles, according to the petitioners. We do not find that the grounds urged satisfiy the yardsticks for entertaining the writ petition notwithstanding the availability of an alternate remedy.

10. Thus from the conduct of the petitioners as well as in the absence of

any exceptional case being made out, we are not inclined to entertain the writ petition in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is accordingly disposed of as not entertained. It is however clarified that all points on merits are kept open for being raised in appropriate proceedings.

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