

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11060 OF 2025

Shri. Raghunath Maruti Kadam & Ors.

.. Petitioners
(Org. Petitioners)

Versus

Kotak Mahindra Bank Ltd & Ors.

.. Respondents
(Org. Respondent Nos. 1 to 4)

P. G. Hartalkar a/w Tejas P. Hartalkar, Advocates for the Petitioners.

*Mr. Mandar Soman a/w Sanjay Anabhawane a/w Tejasvi Nanche a/w
Medha Rane, Advocates for the Respondents/Kotak Bank.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE: OCTOBER 16, 2025

P. C.

1. The above Writ Petition has been filed by 3 Petitioners, challenging the impugned Notice dated 2nd September 2009 issued by the 1st Respondent Bank and, the possession Notice dated 9th May 2025 issued by the Tahsildar, Thane, for taking physical possession of the suit properties. The properties in question are 4 flats. They are Flat No. 7 (103) and Flat No. 8 (104) purportedly belonging to Petitioner No. 1; Flat No. 5 (101)

purportedly belonging to Petitioner No. 2 and Flat No. 6 (102) purportedly belonging to the Petitioner No. 3.

2. It is the case of the Petitioners that they are neither borrowers nor guarantors of the 1st Respondent Bank. This fact is conceded by the 1st Respondent Bank. These Petitioners had filed a Securitization Application before the DRT, which was dismissed by order dated 31st May 2024. From the said order, the Petitioners had preferred an Appeal before the DRAT.

3. The learned advocate appearing on behalf of the Petitioners fairly stated that, at this stage, he is not pressing the prayers sought in the above Writ Petition regarding taking over possession of the aforesaid mentioned flats by the 1st Respondent Bank. He, however, submitted that the DRAT, whilst considering an application for waiver of pre-deposit for filing an Appeal under Section 18 of the SARFAESI Act, 2002, has put a condition on the Petitioners to deposit 50% of Rs. 91 lakhs in two equal installments, for entertaining the Appeal. In other words, the Petitioners have been asked to deposit Rs. 44.50 lakhs in two installments, the first installment of Rs. 22.75 lakhs on or before 10th June 2025, and the second installment, again of Rs. 22.75 lakhs on or before 14th July 2025. Since these amounts were not deposited by the Petitioners, the Appeal filed by them has been rejected by the DRAT by order dated 16th July 2025, a copy of which has

been tendered to the Court by the Mr. Soman, the learned advocate appearing on behalf of the 1st Respondent Bank.

4. The learned Counsel for the Petitioners submitted that admittedly, the Petitioners are not the borrowers or guarantors of the 1st Respondent Bank and neither are they claiming through borrowers, and therefore, no order of deposit could have been ordered by the DRAT as a condition precedent for entertaining their Appeal. He, therefore, submitted that the order passed by the DRAT on 9th June 2025, calling upon the Petitioners to make a pre-deposit, and the consequential order dated 16th July 2025 dismissing the Appeal filed by the Petitioners, be quashed and set aside.

5. Mr. Soman, the learned Counsel appearing on behalf of the 1st Respondent Bank fairly conceded before the Court that the Petitioners are neither borrowers nor guarantors of the 1st Respondent Bank and neither are they claiming through the borrowers. He fairly stated that in a such situation, the DRAT could not have called upon the Petitioners to make a pre-deposit as a condition precedent for entertaining their Appeal. He, therefore, submitted that appropriate orders can be passed in that regard in this Writ Petition.

6. We have heard the learned Counsel of the parties on this aspect. Section 18 of the SARFAESI Act, 2002, provides that any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. The second proviso to sub-section (1) of Section 18 stipulates that no Appeal shall be entertained by the Appellate Tribunal unless the borrower has deposited with Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors, or determined by the Debts Recovery Tribunal, whichever is less. The third proviso to Section 18(1) also gives the Appellate Tribunal power to reduce the amount of pre-deposit to not less than 25% of debt referred to in the second proviso.

7. The word “borrower” has been defined in the Act under Section 2(1)(f) as under :-

(f) “borrower” means any person who, or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) which has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who, or a pooled

investment vehicle which becomes borrower of a [asset reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities .”

8. Admittedly, the Petitioners do not fall within the definition of the word “borrower” as defined under Section 2(1)(f). Once this is the case, the DRAT could not have called upon the Petitioners to deposit any amount as a condition precedent for entertaining their Appeal. We find that the distinction between the words “any person aggrieved” appearing in Section 18(1) and the word “borrower” appearing in the second proviso to Section 18(1) has been missed by the DRAT. It is not as if every person aggrieved by an order passed by the DRT has to comply with the condition of pre-deposit before preferring an Appeal to the DRAT. It is only the borrower as defined under Section 2(1)(f), who would have to comply with the condition of pre-deposit under the second proviso to section 18(1) before its Appeal can be entertained.

9. In these circumstances, we hereby set aside the Order dated 9th June 2025 as well as the Order dated 16th July 2025 passed by the DRAT. We also now restore the Appeal filed by the Petitioners to the file of the DRAT.

The DRAT shall dispose of the Appeal filed by the Petitioners herein, on merits and in accordance with law.

10. The Writ Petition is accordingly disposed of. However, there shall be no order as to costs.

11. 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.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]