



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3262 OF 2024

(M/s.B.J.Grain and others vs. Bank of Baroda (formerly as Dena Bank))

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. R.J.Mirza, Advocate for petitioners.
Mr. S.N.Fuladi, Advocate for respondent bank.

CORAM : AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.

DATE : JANUARY 15, 2025

1) Heard Mr.Mirza learned Counsel for the petitioners. The petition questions the order dated 19/06/2024 passed by the Debt Recovery Appellate Tribunal whereby the appeal filed by the petitioner against the decision of the Debt Recovery Tribunal, came to be dismissed for non-compliance of the order dated 03/02/2023 to deposit 25% of the debt due.

2) Mr.Mirza learned counsel for the petitioners, states that the petitioners are willing to deposit a sum of Rs.50 Lakh today and further amount of Rs.1.5 Crore within a week from today which according to him indicate compliance of the order dated 03/02/2023 passed by the learned Debt Recovery Appellate Tribunal in I.A.No.70/2023 on account of which the request made by the Officer under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) for Police aid for removing certain articles which are kept in the premises be stalled.

3) Mr.Fuladi learned Counsel for respondent bank opposes the contention, submitting that it is too late in the day now for the petitioner to come up with such a plea.

4) The necessary fact to be noted is that the Debt Recovery Tribunal by its order dated 28/12/2022, on I.A.No.2306/2022 in S.A.No.179/2022 M/s.B.J.Grain and others vs. Bank of Baroda raising objection, to the E-auction notice dated 13/12/2022, had rejected the same against which Appeal Diary No.150/2023 came to be filed by the petitioners before the Debt Recovery Appellate Tribunal, in which on an application under Section 18(1) of the SARFAESI Act for waiver of deposit in I.A.No.70/2023, learned Debt Recovery Appellate Tribunal by its order dated 03/02/2023 directed the petitioners to deposit a sum of Rs.2.5 Crores as pre-deposit in two equal installments, the first installment being payable within three weeks i.e. on or before 24/02/2023 and second installment to be payable by 17/03/2023, failure to do which the appeal was directed to be dismissed without any further reference to the Tribunal. It is an admitted position that within this period of time, no amount was deposited. I.A.No.353/2024 was filed by the petitioners for modification by which an amount of Rs.2.5 Crores was directed to be deposited within three weeks from 14/05/2024 without any further extension, non-payment resulting in dismissal of the appeal. Even within this extended period, the aforesaid amount was not deposited. All that was deposited was an amount of Rs.50 Lakh on 03/06/2024, which obviously did not indicate compliance with the aforesaid orders. As a result whereof the appeal before the Debt Recovery Appellate Tribunal came to be dismissed on 19/06/2024.

5) Thought the offer made by Mr.Mirza to deposit the amount as indicated above, now on the face of it appears to be a positive act, on behalf of the petitioners, however what is necessary to be seen is that the auction has already taken place

on 20/12/2022 in pursuance to which a sale certificate has already been issued in favour of auction purchaser on 21/01/2023 and possession of the property in question has also been delivered to the auction purchaser on 21/06/2024. This would clearly indicate that the petitioner by his own conduct, has permitted third party right to be crystallized on account of issuance of the sale certificate on 21/06/2024. That being the position, the petitioners now by making a show-of making payment, cannot ask the court to turn the clock back, as much water has flown and sufficient opportunity was also granted to the petitioners. We therefore, do not see any reason to interfere in the order of dismissal of the appeal for non-compliance of the order of pre-deposit. As such, the petition is therefore dismissed. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)