

**BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI**

Present : Mr Justice Ashok Menon, Chairperson

I.A. No. 520/2023 (WoD)

In

Appeal on Diary No. 1291/2023

Between

M/s Golden Erectors,

Through its partners Padma Motiala Gadia &

Ors.

... Appellant/s

V/s.

Authorised Officer,

The Pandharpur Urban Co-operative Bank Ltd.

& Ors.

... Respondent/s

Mr Dinesh D Tiwari, i/b M/s Dinesh D. Tiwari & Associates,
Advocate for Appellants.

Mr S. S. Natu, Advocate for Respondent No. 1 Bank.

-: Order dated: 01/08/2023:-

The matter is taken up for hearing by way of a praecipe dated 28.07.2023 filed by the Appellants for seeking urgent relief.

2. The Appellants are in appeal impugning the order dated 19.07.2023 in I.A. No. 1626 of 2023 in Securitisation Application (S.A.) at Diary No. 1446 of 2023 on the files of the Debts Recovery Tribunal, Pune (D.R.T.) wherein the Ld. Presiding Officer has granted a stay against Respondent Co-operative Bank from taking possession of the secured assets on condition that the Appellants deposit 25% of the amount mentioned in the demand notice issued to them under Sec. 13 (2) of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). It is further clarified that the 10% of the demand notice amount has to be paid by 1.00 pm on 20.07.2023 i.e. the intended date of taking over of possession, and 15% has to be paid within a period of one month from the date of order. The Appellants did not pay any amount as directed, and have up in appeal.

3. The Appellant had filed the S.A. challenging the Sarfaesi measures initiated by the Respondent Bank on various grounds. The demand notice under Sec. 13(2) of the SARFAESI Act has been challenged on the ground that it does not contain the details of the amount that is claimed. It is also stated that the sixty days clear notice was not given. It is further stated that the symbolic possession was not properly taken and there is also a challenge to the order obtained from the District Magistrate to take physical possession of the property.

4. The Ld. Presiding Officer after considering the contentions raised passed the impugned order for the reason that in the demand notice, there was a demand for ₹4,96,62,970/- together with penal and future interest with effect from 01.09.2021. The impugned order was passed on the premise that as of date the amount due from the Appellants would be more than ₹5 crores and interest thereon is also due. It is submitted that the possession is scheduled for tomorrow i.e. 02.08.2023. The Appellants are apprehensive that they will be dispossessed from the property. It is further contended that the Appellants have a good prima facie case and that are under financial strain because all their bank account have been frozen consequent to the Recovery Certificate obtained by the Respondent Bank from the

Registrar of Co-operative Societies adjudicating the claim under the provisions of the Maharashtra Co-operative Societies Act.

5. The Ld. Counsel appearing for the Respondent No. 1 Bank has vehemently opposed the application and states that the contentions raised are untenable and that at present there is an amount of more than ₹7 crores due from the Appellants and that amount has been already determined by the Registrar of Co-operative Societies.

6. The Appellants have not produced any document to indicate their financial strain apart from the pleadings that there is an attachment of their properties disabling them from operating their accounts. A letter communicated to the Appellants in that regard is also produced. Taking the entire facts and circumstances into consideration, I find that the Appellants are not entitled to the indulgence of this Tribunal to get the pre-deposit amount reduced to the bare minimum of 25% of the amount claimed. They are, therefore, directed to deposit a sum of ₹2.25 crores as pre-deposit. The Ld. Counsel appearing for the Appellants undertakes to deposit ₹10 lakhs by Demand Draft or RTGS by tomorrow i.e. 02.08.2023. The balance shall be paid in two equal instalments. The first instalment of ₹1,02,50,000/- shall be payable within three weeks i.e. on 22.08.2023 and the second instalment shall be payable within three weeks therefrom i.e. on 12.09.2023. Failure to pay any of the amounts shall entail in dismissal of the appeal without any further reference to this Tribunal.

7. In case the Appellants are depositing the amount of ₹10 lakhs by Demand Draft by tomorrow, the possession shall be deferred till

the next date of hearing.

8. The amount shall be deposited in the form of a Demand Draft with the Registrar of this Tribunal.

9. As and when the said amounts are deposited, they shall be invested in term deposits in the name of Registrar, DRAT, Mumbai, with any nationalised bank, initially for 13 months, and thereafter to be renewed periodically.

10. With these observations, the I.A. is disposed of. The Respondents are at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 23.08.2023 for reporting compliance concerning the first instalment.

Sd/-
Chairperson

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