

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

**Present: Mr Justice Ashok Menon, Chairperson**

**Misc. Appeal No. 100/2023**

**Between**

Gold Digitech Theatres Pvt.  
Ltd.

... Appellant/s

Religare Finvest Ltd. & Ors.

...Respondent/s

**AND**

**Misc. Appeal No. 101/2023**

**Between**

Fiitjee Ltd.

... Appellant/s

V/s.

Religare Finvest Ltd. & Ors.

...Respondent/s

Mr Gaurang Kinkhabwala i/b Mr Puneet Gogad, Advocate for  
Appellant.

Mr Charles D'souza along with Mr Archit Virmani and Mr Atul Gupta,  
i/b Optimus Legal, Advocate for Respondents Nos. 1 & 2.

Mr Sidharth Samantaray, Advocate for Respondents Nos. 3 to 5

**-: Common Order dated: 07/08/2023:-**

Misc. Appeal No. 100 of 2023 and Misc. Appeal 101 of 2023 are two appeals preferred by Appellants who claim to be tenants in occupation of the secured premises and face the threat of being dispossessed from the property in the execution of an order which has been obtained against the borrower/ landlord, who is the third Respondent for the realisation of the

debt allegedly due to the first Respondent Financial Institution. The borrower as well as the Appellants herein had filed separate Securitisation Applications as S.A. Nos. 218 of 2023, 255 of 2023 and 256 of 2023, respectively. The borrower had made a proposal to settle the debt by an OTS. The S.A. No.218 of 2023 filed by the third Respondent was taken up for hearing by the Ld. P.O., and vide order dated 11.07.2023 it was concluded that sufficient time has already been granted and although the borrower had paid ₹1 crore towards the loan, the balance of nearly ₹12 crores is yet to be paid and therefore, further time cannot be granted and the Financial Institution was permitted to proceed with the Sarfaesi measures on the basis of the order obtained under Sec. 14 from the Chief Judicial Magistrate, Thane, to take physical possession of the secured assets.

2. In S.A. Nos. 255 of 2023 and 256 of 2023, no orders were passed on the merits of the claim of tenancy put up by the Appellants. However, it was observed that in view of the order passed by the Tribunal in S.A. No. 218 of 2023 (filed by the borrower), the S.As. filed by the Appellants were adjourned to 12.02.2024. No interlocutory or interim orders were passed in these two S.As.

3. The possession of the property is scheduled to take today and the Appellants are in appeal apprehending that they may be dispossessed from the property. The Appellant in Misc. Appeal No. 101 of 2023 is running an educational institution named Fiitjee Ltd. and has produced a lease deed which was purportedly executed on 21.05.2008 and it was also purportedly extended by an addendum cum rectification deed executed on 18.09.2017 whereby the term of the lease has been extended up to 2032 on the enhancement of rent every three years. A mistake which has allegedly occurred in the lease deed executed on 21.05.2008 with regard to the description of the floor which was leased to Fiitjee is also corrected by the

addendum cum rectification deed. In the original lease deed, it was mentioned that the second floor was leased out to them whereas it was actually the first floor which was leased out and that mistake was rectified. The Ld. Counsel for the Appellant also points out the sanction letter pertaining to the three loan facilities granted to the borrower. He has also pointed out the notice issued under Sec. 13(2), the possession notice under Sec. 13(4) and also the application filed under Sec. 14 before the Chief Judicial Magistrate. In all these, documents, it is mentioned that the Appellant in Misc. Appeal No. 101 of 2023 is in possession of the first floor of the mortgage premises and the Appellant in Misc. Appeal No. 100 of 2023 is in possession of floors nos. 2 & 3 of the premises. The order of the Chief Judicial Magistrate under Sec. 14 also contains the description of the property in the schedule that is attached, which clearly states that the three floors of the building are in occupation of the Appellants.

4. Even though there is a registered lease deed executed between the borrower and Fiitjee Ltd., there is no such registered deed with regard to floors 2 & 3 which is in occupation of Gold Digitech Theatres Pvt. Ltd. the Appellant in Misc. Appeal No. 100 of 2023. It is stated that there is an agreement executed between the borrower and the said Appellant and the Ld. Counsel for the Financial Institution has vehemently opposed the right of Gold Digitech Theatres Pvt. Ltd. to continue in occupation of the said premises under a document which is not legally valid. The Ld. Counsel for the Respondent has also pointed out that the addendum cum rectification document registered between the borrower and Fiitjee Ltd. is with the purpose of correcting an alleged mistake which had purportedly crept in the first lease deed without any bonafides, and intended only to defeat the interest of the mortgagee.

5. It is seen that the orders impugned in these two misc. appeals, the

Ld. Presiding Officer has not gone into the contentions raised by the Appellants regarding their right to continue in possession of the property as tenants. Admittedly, they are in occupation of the property. Without passing any orders on the interlocutory applications filed by these Appellants, the matter was adjourned to 24.02.2024 in view of the orders made against the borrower in S.A. No. 218 of 2023. The Respondent FI was also specifically granted permission to take possession of the property. This, in my opinion, does not appear to be proper because the Appellants are claiming a right of tenancy and are admittedly in the occupation of the property and therefore, the Ld. Presiding Officer should have taken a decision as to whether they are entitled to continue in possession of the property, and the possession of the property belonging to the debtor is to be taken subject to the claims raised by the tenants. Their interlocutory applications should have been taken into consideration and orders could have been passed on whatever material that was available before the D.R.T.

6. The Ld. Counsel appearing for the borrower third Respondent herein has offered to settle the entire debt by the end of the year and has requested the FI to give details of the statement of account which they are not in agreement with as is revealed from the order passed in the S.A. No. 218 of 2023. It is undertaken that whatever the amount, they are willing to settle it by the end of the year. According to the Ld. Counsel appearing for the FI, after adjusting the amount which is already paid, there is still a balance of over ₹11 crores due from the borrower.

7. Misc. Appeals are, therefore, disposed of with a direction that the Ld. Presiding Officer may consider the interlocutory reliefs of the appellants in S.A. Nos. 255 of 2023 and 256 of 2023 and decide whether they are entitled to continue in possession of the property on the basis of the tenancy right claimed by them. I am not going into merits but since

there are materials and admission on the part of the mortgagee accepting the fact that the Appellants are in actual possession of the property.

8. The Appellants shall not be physically dispossessed from the property till a decision is taken by the D.R.T. on the interlocutory reliefs sought, and till then, the status quo shall continue.

The D.R.T. shall take a decision on the applications filed by the applicants in the S.As. untrammelled by whatever is stated in this order and on the basis of the documents which are already on record. The interlocutory applications shall be decided as expeditiously as possible at any rate within a period of one month. The parties shall not seek any unnecessary adjournment.

Hence, the Misc. Appeals are disposed of as mentioned above.

Sd/-  
Chairperson

mks-18 & 19.

DRAFT NUMBER