

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

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

**I.A.No.602/2023(WOD)**

**In**

**Appeal on Dairy No.1584/2023**

**Between**

Parekh Automotives Pvt Ltd & Anr. ... Appellant/s  
V/s.

Apna Sahakari Bank Ltd & Anr. ... Respondent/s

Mr. Ayush Kotari, along with Mr. Sailesh Kumar Rai, Advocate for Appellant.

Mr. Charles D'souza, along with Mr. Nikhil Rajani, i/b M/s. V. Deshpande & Co., Advocate for Respondent.

**:- Order dated: 01/09/2023:-**

The matter is taken up for hearing by way of praecipe filed by Appellant for seeking urgent relief.

The Appellants are before this Tribunal impugning the order dated 31.08.2023 in S.A. No. 326/2023 on the files of Debts Recovery Tribunal – II, Mumbai (D.R.T) wherein the Ld. Presiding Officer refused to grant any interlocutory reliefs with regard to the Sarfaesi measures initiated against the Appellants with regard to the secured assets which consist of four flats situated in Ville Parle, Mumbai.

2. Appellant No. 1 is a company and Appellants Nos. 2 & 3 are its directors. The 1<sup>st</sup> Respondent Bank had initiated Sarfaesi measures by classifying the account as Non-Performing Assets in the year 2021 and a demand notice was issued on 01.10.2021 u/s. 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ( 'SARFAESI Act', for short) demanding a sum of ₹ 9,62,22,796/- as of 31.08.2021.

3. It is seen that the Appellant had responded to the demand notice wherein there were no challenges to the validity of the notice all that was demanded was six months time to pay the loan in quarterly instalments of ₹ 24,00,000/- each and concession with regard to the rate of interest was also sought. There was already an adjudication in an arbitration proceedings, the award of which was challenged in futility before the Hon'ble High Court. The Appellants have before D.R.T sought for three months time to pay the amount and undertaken that during that period they would attempt to sell the 2<sup>nd</sup> Appellant's ancestral property and raise money to pay off the debt. The Ld. Presiding Officer was not enthused with the proposition and refused to grant any order to stall the Sarfaesi measures. Hence, the Appellants are in appeal.

4. It is contended that the Appellants are under financial strain for the reason that the 1<sup>st</sup> Appellant company is running at a loss and has almost become defunct. The 2<sup>nd</sup> Appellant is the 77-year-old man who was incarcerated for about 9 months in 2022. The 3<sup>rd</sup> Appellant is a lady who is 70 years old and Appellant Nos. 2 and 3 also do not have any substantial means of income to pay off debt. Hence, the Appellants seek the indulgence of this Tribunal to invoke the discretionary reliefs of keeping the pre-payment to a minimum of 25% of the debt due.

5. The Ld. Counsel appearing for the Respondent Bank has opposed the application with vehemence and states that despite having replied to the 13 (2) notice seeking time to pay off the debt, there have been no payments made by the Appellants and now the

outstanding due has mounted up to ₹ 12,31,00,000/- approximately. Four flats are provided as security assets and possession of the property is intended to be taken.

6. It is also stated that there is absolutely no material to show that the Appellants are under any financial strain. The Appellants have also not made out any prima facie case in support of their challenge to the Sarfaesi measures.

7. The Ld. Counsel appearing for the Appellants has stated that the action taken for physical possession u/s. 14 has been challenged by the Appellants under some grounds mainly for the reasons that the name and designation of the authorized officer have not been specified which is an important requirement under the Rules.

8. On considering the entire facts and circumstances of this case, I find that the Appellants are not been able to make out a strong prima facie case much less an arguable case in support of their challenge to the Sarfaesi measures. In their reply to the demand notice u/s. 13 (2), they have admitted the liability and have only sought indulgence in reducing the rate of interest and had sought time to pay off the debt in instalments.

9. Hence, the challenges would not lie. There is little material to show the impecunious condition of the Appellants so as to bring the amount of pre-deposit to the minimum of 25% as prayed. Going by the decision of the Hon'ble Supreme Court the Appellants would have to deposit 50% of the amount demanded in the 13 (2) notice if the Sarfaesi measures u/s. 13 (2) and 13 (4) stand challenged and 50% of the amount demanded in the demand notice would come to

approximately ₹ 4.8 crores.

10. Apart from the fact that Appellant Nos. 2 and 3 are aged more than 70, there is no other consideration which could be given to the Appellants. They are therefore directed to deposit a sum of ₹ 4 crores as pre-deposit. The Ld. Counsel appearing for the Appellants undertakes to produce a demand draft of ₹ 10,00,000/- tomorrow before the time scheduled for taking over possession of the property. In such case, the taking over a possession shall be deferred till the next date of hearing, and the balance amount shall be paid in three equal instalments.

11. The 1<sup>st</sup> instalment of ₹ 1.30 crores shall be payable within three weeks, i.e. on or before 22.09.2023 and the 2<sup>nd</sup> instalment of ₹ 1.30 crores shall be payable within three weeks therefrom, i.e. on or before 13.10.2023 and the 3<sup>rd</sup> instalment of ₹ 1.30 crores shall be payable within three weeks therefrom, i.e. on or before 03.11.2023. In default, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

13. 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.

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

Post on 25.09.2023 for reporting compliance regarding the payment of 1<sup>st</sup> instalment.

Sd/-  
Chairperson

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DRAFT MUMBAI