BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No.517/2023(WoD)

In

Appeal on Dairy No. 1309/2023

Between

Sachin Shubhashchandra Tiwari & Anr. … Appellant/s

V/s.

Unity Small Finance Bank Ltd. …Respondent/s

An Advocate for the Appellant is present.

An Advocate for the Respondent is present.

-: Order dated: 28/07/2023:-

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

The Appellant is in appeal impugning the order dated 24.07.2023 of the Debts Recovery Tribunal - III, Mumbai in S.A. No. 156/2023 wherein the Ld. Presiding Officer refused to grant any further stay of the Sarfaesi measures contemplated under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). initiated by the Respondent Bank.

2. The D.R.T had passed a series of orders starting from 10.04.2023 wherein the Appellants were given sufficient opportunity to pay the amount and to get the Sarfaesi measures stalled. The opportunity was also given to the Appellants on undertakings that the debt would be regularized on payment of outstanding dues. The total outstanding amount as of that date was ₹ 4,81,200/- and the

Appellants were given sufficient time to pay that amount and get the Sarfaesi measures stalled.

3. The Appellants did not, however, seize the opportunity of making payment, and therefore, the Ld. Presiding Officer found that further indulgence in the matter should not be shown and hence, liberty was granted to the Respondent to go ahead with the taking over the possession of the property.

4. Aggrieved by that order, the Appellants are in appeal. The Appellants state that they are under financial strain, but there is no acceptable evidence produced to indicate the financial strain of the Appellants. It is the residential house of the Appellants that is being taken possession of and they would come to the streets in case they are dispossessed, submits the Ld. Counsel appearing for them.

5. The Respondent Bank has vehemently opposed the application for waiver of deposit and stated that the Appellants are directed to pay 50% of the outstanding amount as of the date which comes to ₹ 14,92,387/-.

6. After having heard the rival contentions I find that the Appellants have not made out any prima facie case nor have they proved their financial strain hence, they are not entitled to any indulgence of this Tribunal to exercising jurisdiction under the 3^{rd} proviso of Sec. 18 (1) of the SARFAESI Act to reduce the amount to the minimum of 25%.

7. The Appellants are directed to deposit sum of ₹ 6,00,000/- as pre-deposit in two equal instalments. The 1^{st} instalment of ₹ 3,00,000/- shall be paid within a period of three weeks i.e., on or

before 18.08.2023 and the 2nd instalment of ₹ 3,00,000/- shall be payable within two weeks therefrom, i.e., on or before 01.09.2023.

8. On payment of the 1st instalment within the stipulated time, the Appellants shall be entitled to a stay of the taking over of possession under the SARFAESI Act by the Respondent Bank. Failure to pay the instalments within the stipulated time shall entail in dismissal of the appeal without any further reference to this Tribunal.

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

10. 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.

11. 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 21.08.2023 for reporting regarding the compliance of 1st instalment.

Sd/-
Chairperson

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