IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11067 OF 2025

Narendra Nandkishor Borate and Another … Petitioners
Versus
Tata Capital Housing Finance Limited and Others … Respondents

******

Ms. Ayodhya Patki a/w. Mr. Vallabh Tokekar, for the Petitioners.
Mr. Omar Shaikh a/w. Mr. Sahil Salvi, for Respondent No. 1.
Mr. Rishabh Shah a/w. Ms. Sanika Athalye i/b. Raval Shah & Co., for Respondent Nos. 2 to 7.

******

CORAM : MANISH PITALE AND SHREERAM V. SHIRSAT, JJ.

DATE : 23rd APRIL, 2026

P.C.

1. Heard the learned counsel for the parties.

2. The petitioners are the auction purchasers and they are aggrieved by order dated 10th December, 2024 passed by the Debts Recovery Appellate Tribunal, Mumbai (DRAT) whereby the DRAT while coming to a conclusion that the appeal filed by the respondent No. 2 original borrower was rendered infructuous, proceeded to issue directions beyond the scope of the appeal, to the prejudice of the petitioners, thereby demonstrating a jurisdictional error on the part of the DRAT.

3. Respondent Nos. 2 to 7 are the borrowers /guarantors/ mortgagors in respect of credit facilities advanced by respondent No. 1 (secured creditor). It is undisputed that the respondent Nos. 2 to 7 defaulted in repayment of loans/ credit facilities, as a consequences of which respondent No. 1 secured creditor was constrained to take recourse to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The action taken by the respondent No. 1 secured creditor reached the stage of auction sale of commercial as well as residential properties of respondent Nos. 2 to 7.

4. There were two accounts, both of which had become NPA, as a consequence of which it appears that respondent No. 1 secured creditor proceeded to put to auction sale both the commercial as well as residential property. The auction was conducted on the same date and in the said auction sale, the petitioners emerged as the successful bidders and auction purchasers for the residential property.

5. The respondent Nos. 2 to 7 being aggrieved by the said action of respondent No. 1 secured creditor filed two Securitisation Applications No. 90 of 2024 (pertaining to residential property) and No. 511 of 2023 (pertaining to the commercial property) before the Debts Recovery Tribunal, Pune (DRT).

6. During the course of the proceedings, before the DRT in the said pending securitisation applications, a common undertaking was given on behalf of respondent No. 2 specifying a schedule of repayment with a specific statement that in the event there was default on the part of the applicants therein i.e. respondent Nos. 2 to 7, they would not object to sale of the commercial as well as residential property. It is in the backdrop of the said undertaking, that the auction sale had to be conducted as admittedly there were defaults on the part of respondent Nos. 2 to 7 even in respect of schedule of repayment given in the common undertaking dated 3rd June, 2024.

7. It is a matter of record that in the process when the auction was conducted on 22nd May, 2024, the petitioners deposited 25% amount on the same day with the respondent No. 1 secured creditor and on 23rd May, 2024 a sale confirmation letter was issued in favour of the petitioners. It appears that due to some initial payments made in the light of the common undertaking dated 3rd June, 2024, the balance 75% of the amount could be paid by the petitioners only on 17th August, 2024 and 19th August, 2024. The entire payment having been made, respondent No. 1 secured creditor issued a sale certificate in favour of the petitioners on 22nd August, 2024.

8. In this situation, the respondent Nos. 2 to 7 filed an Interim

Application in pending Securitisation Application No. 511 of 2023 pertaining to the commercial property, seeking extension of time to make payment as per the aforementioned undertaking dated 3rd June, 2024. The DRT, Pune dismissed the said application by order dated 22nd August, 2024. It is relevant to note that in the interregnum on 31st July, 2024, the aforementioned Securitisation Application No. 90 of 2024 (pertaining to residential property) stood disposed of and the proceeding pertaining thereto was closed. This is crucial for deciding the present Writ Petition.

9. As against the order dated 22nd August, 2024 passed by DRT, Pune dismissing the application for extension of time to make payments filed on behalf of respondent Nos. 2 to 7, the aforementioned appeal bearing Miscellaneous Appeal on Diary No. 2061 of 2024 was filed before the DRAT. The impugned order was passed in this appeal.

10. The DRAT in the impugned order recorded that the scope of the appeal was limited as the respondent Nos. 2 to 7 had prayed for extension of time to make payments in terms of undertaking till 5th September, 2024 and by the time the Miscellaneous Appeal was taken up for consideration, the said time period had already elapsed and therefore, the appeal itself was rendered infructuous. Having made the said observation, the DRAT proceeded to go into the question of the necessity of disposing of the residential property in

the light of the sale of commercial property satisfying the dues of respondent No. 1 secured creditor and thereupon observed that handing over possession of residential premises would await further order of the DRT in the pending Securitisation Application. The only pending securitisation application before the DRT was Securitisation Application No. 511 of 2023.

11. The learned counsel for the petitioners submits that the DRAT could not have issued the impugned direction, having found that the appeal filed by respondent Nos. 2 to 7 itself had been rendered infructuous. It is emphasized that the securitisation application pending before the DRT pertains to the commercial property and that there is no substantial securitisation application pending before the DRT with respect to sale of residential property, particularly in the light of order dated 31st July, 2024 passed in Securitisation Application No. 90 of 2024. In that light, it was submitted that the Interlocutory Application of respondent Nos. 2 to 7 bearing No. 385 of 2025 filed in Securitisation Application No. 511 of 2023 seeking cancellation of sale of residential property cannot be countenanced in the face of substantial challenge to sale of the residential property having been withdrawn. On this basis, it was submitted that the impugned order deserves to be set aside and that consequential reliefs must follow in favour of the petitioners. It was emphasized that the petitioners have parted with the entire sale consideration

as far back as in August, 2024 and they are still waiting for possession of the residential property.

12. On the other hand, learned counsel appearing for respondent Nos. 2 to 7 submitted that the said respondents find themselves in the said predicament due to the actions of respondent No. 1 secured creditor. There was absolutely no necessity to put the residential property to sale, particularly when the amount due was fully recovered by sale of the commercial property. It was submitted that since the common undertaking dated 3rd June, 2024 was submitted before the DRT in the pending securitisation application, the respondent Nos. 2 to 7 are entitled to pursue their pending Interlocutory Application No. 385 of 2025 in the pending Securitisation Application No. 511 of 2023 for a prayer to cancel the sale of the residential property. It was submitted that in such circumstances, taking into account the overall facts, the DRAT took a practical approach in directing that till the pending applications were decided the exercise of handing over of the possession to the petitioners ought to remain stayed. It was submitted that this Court may consider expediting the hearing on the pending interlocutory application without interfering with the impugned order.

13. Mr. Omar Shaikh, learned counsel appearing on behalf of respondent No. 1 secured creditor submitted that in the light of the defaults committed

by respondent Nos. 2 to 7, the said respondent No. 1 had proceeded under the provisions of Securitisation Act in accordance with law.

14. Having heard the learned counsel for the rival parties, we find that a perusal of the impugned order passed of the DRAT shows that the DRAT traveled beyond the scope of the appeal itself while passing the impugned order dated 10th December, 2024. The contents of the relevant portion of the impugned order would show that the DRAT was conscious of the limited scope of the Miscellaneous Appeal filed by respondent Nos. 2 to 7 and yet it proceeded to issue the impugned directions. It would be necessary to quote the relevant portion of the impugned order of the DRAT, which reads as follows :

> 4] Coming to the merits of the appeal, I find that the only scope of this appeal was to see whether the D.R.T. was justified in not granting an extension of time to pay the amount undertaken to be paid by the appellants. The appellant has sought time till 05.09.2024, which was declined by the impugned order. The scope of this appeal is therefore limited to whether the DRT was justified in declining to grant an extension till 05.09.2024. They could not pay the amount even within that time and therefore, the appeal has now become infructuous. It is brought to the notice of this Tribunal that the two items of the property that were mortgaged, and both have been sold. The factory premise was sold for a sum of Rs. 3.07 crores and the residential premise residential p was allegedly sold for a sum of Rs. 2.24 crores. That would be more than the total amount due.
>
> 5] The Ld. Counsel appearing for the appellants submits that even if the sale consideration received on the sale of the factory premises is taken as admitted the payment of a sum of Rs. 65 lakhs paid by the appellants in two installments added

> to that would clear the entire debt, and therefore, the respondent could not have proceeded with the sale of residential premise.
>
> 6] Given my finding that this appeal has now become infructuous, the fact of whether the respondent was justified in selling the residential premise despite having realised the entire debt debt by the sale of the factory premise and the payment of a sum of Rs. 65 lakhs is something to be considered by the D.R.T. and therefore, I leave it to the D.R.T. to decide in the pending S.A. the question whether the appellants are entitled to save the residential premises which could not have been sold given the payment and realisation of the entire debt by sale of the factory premises. Leaving these questions to be determined by the D.R.T., this appeal is disposed of. It is conceded by the Ld. Counsel on the instruction given by Appellant No.2 who is present in person on behalf of the appellants, the sale of the factory premises can be confirmed, and the respondent bank is at liberty to hand over possession of the factory premises on 13.12.2024 to the auction purchaser. The handing over of possession of the residential premise shall await the order of the D.R.T. in the pending S.A. The possession of residential premise scheduled to be taken on 11.12.2024 shall not be taken in view of this order made by this Tribunal and it is left to D.R.T. to decide as to whether the sale of the residential premise is also necessary or not, considering the principle of only that much property as much is required for realisation of the debt need be sold.

15. A perusal of the above quoted portion of the impugned order clearly shows that the DRAT committed a jurisdictional error in issuing the impugned direction. Once, the DRAT had reached the conclusion that the appeal had been rendered infructuous in paragraph No. 4, there was absolutely no ground to observe further and to make observations about the necessity or otherwise of sale of the residential property. The appeal ought to have been disposed of as infructuous on the ground that the extension of time

for making payments in terms of the undertaking was sought by respondent Nos. 2 to 7 only up to 5th September, 2024 before the DRT and the said period had already expired by the time the Miscellaneous Appeal came up for consideration before DRAT on 10th December, 2024.

16. Yet, the DRAT proceeded to discuss the aspect as to whether the commercial as well as residential properties were both required to be put to auction and in that context ended up issuing the impugned direction that handing over of possession of the residential property to the petitioners would await orders of the DRT in the pending Securitisation Application.

17. It escaped the attention of DRAT that the only pending securitisation application before the DRT was Securitisation Application No. 511 of 2023, pertaining to the commercial property. The said pending securitisation application has no concern with the residential property at all. As a matter of fact, by the aforementioned order dated 31st July, 2024 the DRT, Pune, had disposed of and closed the proceeding pertaining to Securitisation Application No. 90 of 2024, in respect of the residential property.

18. In other words, the respondent Nos. 2 to 7 in their pending Interlocutory Application No. 385 of 2025 are pressing for cancellation of sale of residential property, in Securitisation Application No. 511 of 2023 which is concerned only with the sale of commercial property. This shows that

interim relief is being sought whereas no final relief is claimed in any pending proceedings before DRT in respect of the residential property. It is settled law that interim relief can be granted only in aid of final relief. On this short ground, we find that the DRAT committed a grave error in directing that handing over the possession of the residential property to the petitioners would await decision on the pending securitisation application by the DRT. A clear jurisdictional error is pointed out by the petitioners in so far as the impugned order passed by the DRAT is concerned. In fact, the DRAT failed to appreciate the fact that Securitisation Application No. 90 of 2024 pertaining to residential property was disposed of and proceeded as if a substantial challenge to the auction sale of the residential property was still pending before DRT.

19. We are of the opinion that in view of the observations made here-in-above the impugned order passed by DRAT is rendered unsustainable and therefore, it deserves to be set aside.

20. Consequently, the Writ Petition is allowed and the impugned order dated 10th December, 2024 passed by the Debts Recovery Appellate Tribunal, Mumbai is quashed and set aside to the extent of the direction contained in paragraph No. 6 of the impugned order. It is held that the disposal of the Miscellaneous Appeal by the DRAT as being infructuous is the only correct

conclusion drawn by the DRAT.

21. In view of the Writ Petition being allowed, there would be no impediment for the consequential steps to be taken with regard to the sale certificate already issued in favour of the petitioners.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**