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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 21712 OF 2025

Ishtiyaque Aslam Khan

...Petitioner

Versus

DCB Bank and Ors.

...Respondents

Mr. Aseem Naphade i/b Mr. Rajendra Rathod for the Petitioner.

Mr. Shashank Fadia for Respondent No.1.

Mr. R.B. Mungekar a/w Mr. Sudhanshu Sawant for Respondent Nos. 2 and 3.

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

DATE: 20th JANUARY 2026.

ORDER :

1. Heard Learned Counsel for the parties.
2. The Petitioner is aggrieved by an order dated 26th June 2025 passed by the Debt Recovery Appellate Tribunal, Mumbai (DRAT, Mumbai). By the impugned order the DRAT, Mumbai has directed the Petitioner to deposit 40% of an amount claimed by Respondent No.1/Bank as amount due from the borrowers, i.e., Respondent Nos. 2 and 3, as a precondition for entertaining the Appeal filed by the Petitioner against rejection of interim reliefs by the DRT, Mumbai, in a Securitization Application filed on behalf of the Petitioner.
3. The impugned order records that in the event the Petitioner fails to deposit 40% of the amount as directed, the Appeal would stand rejected. Since the Petitioner failed to deposit the amount in terms of the self

operating clause, the Appeal itself, as on today, has been rejected.

4. The principal ground of challenge raised on behalf of the Petitioner is that since the Petitioner is neither borrower nor a guarantor of the subject loan taken by the borrowers, Respondent Nos. 2 and 3, the condition of pre-deposit as per proviso to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), could not have been imposed. It is submitted that a Division Bench of this Court in the case of *Anchor Electricals Pvt. Ltd. vs. Canara Bank and Another*¹ has specifically held that when the aggrieved person invoking Section 18 of the (SARFAESI Act) is neither the borrower nor the guarantor, the condition of pre-deposit cannot be imposed.

5. Learned Counsel for the Petitioner further relies upon judgments of the Delhi High Court in the cases of *Manju Devi & Ors. vs. M/s. R.B.L. Bank Ltd. & Ors.*², *Indiabulls Housing Finance Ltd. vs. Vaibhav Jhawar and Others*³ and *Manoj Kumar Pruthi vs. Magma Housing Finance*⁴, to contend that even the Delhi High Court in the aforesaid judgments has laid down the said principle, as recognized by the Division Bench of this Court in the said judgment in the case of *Anchor Electricals Pvt. Ltd. vs. Canara Bank and Another* (supra).

1 2017 SCC OnLine Bom 6944

2 2017 SCC OnLine Del 6865

3 2018 SCC OnLine Del 12853

4 2019 SCC OnLine Del 10469

6. Reliance is also placed on judgment of the Supreme Court in the case of *Sidha Neelkanth Paper Industries P. Ltd. and Another vs. Prudent ARC Ltd. and Others*⁵ to contend that on a proper reading of Section 18 of the SARFAESI Act, the insistence on pre-deposit as per the proviso to the said provision can be insisted upon only if the Appellant is a borrower or a guarantor.

7. We have perused the judgment of the Supreme Court, as also the judgments of the Delhi High Court and this Court. We find substance in the contention raised on behalf of the Petitioner that while Appeal under Section 18 of the SARFAESI Act can be filed by any aggrieved person, the proviso mandatorily requiring pre-deposit of 50% of the amount due and for reasons to be recorded at least 25% of the amount due, can apply only to the borrower or the guarantor. Apart from the fact that the language of the provision itself is absolutely clear, the position of law clarified in the aforementioned judgments enures to the benefit of the Petitioner.

8. We are convinced in reaching the said conclusion upon perusing the documents on record, which show that the Petitioner was a tenant in the original building which went into redevelopment. Consequently, being a tenant, Respondent No.4 – Developer entered into a Permanent Alternate Accommodation Agreement (PAAA) with the Petitioner.

9. It is the case of the Petitioner that Respondent No.4 perpetrated a fraud on him by recording in the PAAA that he was allotted Flat No.403 in

5 2023 SCC OnLine SC 12

the redeveloped building, while at the same time entering into an Agreement for Sale of the very same flat with Respondent Nos. 2 and 3 who took a home loan from Respondent No.1/Bank for the said property. It is the case of the Petitioner that in such a situation he is entitled for being put in possession of the subject flat.

10. It is in this background that the Petitioner filed the Securitization Application before the DRT and moved an Application for interim reliefs. The Application for interim reliefs was rejected, giving rise to the Appeal filed before the DRAT.

11. In the facts and circumstances of the present case, we find that the Petitioner is neither a borrower nor a guarantor of the subject loan in respect of which the Respondent No.1 is proceeding against the borrowers, i.e. Respondent Nos. 2 and 3.

12. Although the Learned Counsel appearing for Respondent No.1/Bank submitted that PAAA was executed in the year 2020, while the loan agreement and other documents were executed in the year 2018, to contend that there is no merit in the grievance raised by the Petitioner, we are of the opinion that such arguments can be reserved, to be placed before the DRT and DRAT when the matters are taken up for consideration on merits.

13. This Writ Petition concerns the narrow question as to whether the Petitioner was mandatorily required to deposit 25% or upto 50% of the outstanding loan amount when he is neither the borrower nor the

guarantor. In the light of the fact of the said question is no longer as *res integra* and the aforementioned judgments lay down the position of law in favour of the Petitioner, we are inclined to allow the Petition.

14. Accordingly, the Writ Petition is allowed. The impugned order dated 26th June 2025 passed by the DRAT is quashed and set aside. Consequently, the Appeal filed by the Petitioner is revived and restored. It shall now be taken up by the DRAT for further consideration on merits without insisting on any pre-deposit on the part of the Petitioner.

15. In the light of the fact that the Appeal filed by the Petitioner stands revived before the DRAT, Interim Application No. 446 of 2025 filed by the Petitioner in the pending Appeal shall be taken up for consideration by the DRAT at the earliest and an endeavour shall be made to dispose of the Application within four weeks from the date a copy of this order is produced before the DRAT.

16. Writ Petition is disposed of in the above terms. Pending Applications, if any stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)