

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 186 of 2022
In
R/SPECIAL CIVIL APPLICATION NO. 3215 of 2022

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In
R/LETTERS PATENT APPEAL NO. 186 of 2022

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RAJUBHAI KANUBHAI BHARWAD
Versus
SOUTH INDIAN BANK

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Appearance:

MR. KIRTAN H MISTRY(10012) for the Appellant(s) No. 1,2
for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 11/02/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.J.DESAI)

1. The present appeal has been filed by the appellants - original petitioners under clause 15 of the Letters Patent, challenging an oral order dated 10.02.2022 passed by the learned Single Judge (i. e. yesterday). The permission was sought for by learned advocate for circulation of the present appeal in view of the fact that the authority is going to take the possession of the residential premises belonging to the appellants who are the owners and are residing with their wives and other family members.

2. The appeal has been placed for hearing today.

3. A copy of the order impugned is supplied during the hearing of the present appeal.

4. Learned advocate Mr. Chitrajeet Upadhyay for learned advocate Mr. Kirtan Mistry at the outset submits that the appellants are residing with their respective family members in the disputed property and if they are dispossessed, it would be a great hardship to number of persons. He states that the appellants are ready and willing to deposit an amount of Rs.20 Lacs before respondent No.1 - South Indian Bank latest by 14.02.2022. He further states that since the alternative remedy is available under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act as observed by the learned Single Judge, the appellants shall approach the authority established under the said Act as early as possible and shall file appropriate proceedings on or before 04.03.2022. He also states that the application for interim relief shall be filed before the competent authority and shall request for interim relief.

5. Considering the fact that the appellants have shown readiness and willingness to deposit an amount of Rs.20 Lacs and the fact that the property which is likely to be auctioned is a residential premises wherein two families are residing, we deem appropriate to pass following order :-

(I) The appellants shall deposit an amount of Rs.20 Lacs latest by 14.02.2022 by RTGS with respondent No. 1 - South Indian Bank.

(II) The appellants and their respective wives shall file an undertaking before this Court through email on or before 12.02.2022 in the present proceedings stating that they shall abide by the observations made by this Court in the appeal and shall deposit the amount as per their statement.

(III) The appellants shall file appropriate proceedings under Section 17 of the SARFAESI Act not later than 04.03.2022 along with appropriate application.

(IV) The respondents shall not dispossess the appellants and their family members till 11.03.2022 if the aforesaid conditions are fulfilled by the appellants.

(V) If the amount of Rs.20 Lacs as per the undertaking is not deposited through RTGS, the interim relief granted by this Court would stand vacated automatically.

(VI) It is expected from the authority established under the SARFAESI Act that if any application is filed for interim relief, the same shall be dealt with expeditiously.

6. It is hereby made clear that this Court has not examined the merits of the case of the appellants. The authority shall decide the case on its own merits.

7. With the above direction, the appeal stands disposed of. Consequently, the Civil Application for stay does not survive and it also stands disposed of.

Direct service is permitted today.

(A.J.DESAI, J)

(ANIRUDDHA P. MAYEE, J.)

cmk

