

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13470 OF 2026

Bank of India

... Petitioner

Versus

M/s ASFA International Proprietor Shri
Musheer Ahmed Khan and others

... Respondents

Mr. S. U. Kamdar, Senior Counsel, a/w Mr. O. A. Das, for Petitioner.

Mr. Mandar Soman, a/w Ms. Trupti N., for Respondent Nos. 1 to 3.

Mr. Jaganathan V. for Respondent Nos. 4 and 5.

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

DATE : 14th OCTOBER 2026.

PC:

1. Heard Learned Senior Counsel for the petitioner - Bank (secured creditor).
2. The petitioner - Bank is aggrieved by the order dated 19/08/2026 passed by the Debts Recovery Tribunal – III, Mumbai (DRT), whereby an ad-interim direction has been issued to the petitioner - Bank not to issue sale certificate in favour of the auction purchasers (Respondent Nos. 4 and 5).
3. The petitioner - Bank is pressing for stay of the impugned order by relying upon the chronology of events as stated in the petition.

4. This is a case in which Respondent Nos. 1 to 3 (borrowers) filed securitisation application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), at a stage when the petitioner - Bank had proceeded to even take physical possession of the secured asset pursuant to steps taken under Sections 13 (2) and (4) of the SARFAESI Act. The subject property (secured asset) was put to auction on 25/06/2026 in pursuance of a sale notice dated 05/06/2026 issued by the petitioner – Bank. Respondent Nos. 4 and 5 were the successful auction purchasers for their bid amount of Rs. 1,06,75,000/-. It is the case of the petitioner – Bank that by the time the securitization application along with interim application filed by Respondent Nos. 1 to 3 was listed on 19/08/2026 before the DRT, the entire bid amount was deposited by the auction purchasers.

5. Respondent Nos. 1 to 3 are represented by counsel, who submitted that there is doubt about the fact as to whether the initial 25% amount was deposited by the auction purchasers as per Rule 9 (3) of the Security Interest (Enforcement) Rules, 2002 framed under the SARFAESI Act. The aforesaid statement is contested on behalf of the petitioner – Bank. It is brought to notice of this Court that since 26th June 2026 was a holiday on account of Moharrum and 27th and 28th June being Saturday and Sunday were bank holidays, the payment received on 29th June 2026 satisfied the requirement

of the aforesaid rule. We are of the opinion that the said aspect is sufficiently clarified by the Bank before this court.

6. Be that as it may, we are concerned in this petition with the manner in which DRT has proceeded to issue the ad-interim direction in a most cavalier and casual manner.

7. The basic requirement for considering issuance of an ad-interim/interim order is examination of the case of the applicant on the touchstone of the three pronged test as per settled law. This requires the Court or Tribunal to examine whether the applicant has made out a strong *prima facie* case in its favour and as to whether the balance of convenience lies in its favour on a further examination of the aspect as to whether the applicant would suffer grave and irreparable loss in the absence of such ad-interim/interim relief.

8. The impugned order is bereft of any discussion on the said aspects of the matter. As a matter of fact, the order simply records that in the pre-lunch session, the petitioner - Bank had stated that only 25% amount had been received from the auction purchasers. Thereafter, in the post-lunch session, it was stated that 100% amount had been received, but the same fact was not mentioned in the additional affidavit and on this sole ground, the DRT proceeded to issue the direction restraining the petitioner - Bank from

issuing sale certificate in favour of the auction purchasers.

9. We are of the opinion that it was first the duty of the DRT to examine as to the stage at which Respondent Nos.1 to 3 had approached the DRT by invoking Section 17 of the SARFAESI Act. The DRT ought to have examined as to whether the said respondents had made out a strong *prima facie* case in their favour for interdicting the petitioner - Bank from issuing sale certificate in favour of the auction purchasers. No such examination on facts was undertaken and in a most cavalier manner, the drastic direction was issued of restraining the petitioner - Bank from issuing sale certificate in favour of auction purchasers.

10. The learned counsel for the Respondent Nos.1 to 3 (borrowers) has raised a preliminary objection about maintainability of the writ petition in the light of alternative remedy available to the petitioner - Bank to approach the Debts Recovery Appellate Tribunal (DRAT).

11. We are of the opinion that when an order of a Tribunal is pointed out to the Writ Court, which suffers from obvious and glaring errors and when such an order is in the teeth of settled law, writ jurisdiction can certainly be exercised. In the case of *East India Commercial Company Limited v. Collector of Customs, Calcutta*¹, the Supreme Court has held that when an order is passed in the teeth of settled law, such an order is an order without

1 AIR 1962 SC 1893

jurisdiction. This ground is enough for this Court to entertain the present writ petition.

12. In view of the above, issue notice returnable on 20th November 2026, 'High on Board'.

13. Mr. Soman learned counsel waives notice on behalf of Respondent Nos. 1 to 3. Mr. Jaganathan learned counsel waives notice on behalf of Respondent Nos. 4 and 5. Hence, service is complete. Reply affidavits shall be filed on or before 5th November 2026.

14. Rejoinder affidavit if any shall be filed before the next date of listing.

15. In the meanwhile and till the next date of listing, there shall be ad-interim stay of the impugned order.

16. At this stage, Mr. Soman, the learned counsel appearing for Respondent Nos. 1 to 3, on instructions of Mr. Musheer Ahmed Khan, proprietor of Respondent No. 1, M/s ASEFA International, states on behalf of respondent Nos. 1 to 3 that in such a situation, this Court may consider allowing the writ petition and setting aside the impugned order. It is submitted that the said respondents will pursue the pending interim application before the DRT in accordance with law.

17. In view of the above and particularly in the light of the statement

made by the proprietor of Respondent No. 1 before this Court, the writ petition is allowed and the impugned order dated 19/08/2026 passed by the DRT is quashed and set aside.

18. The Respondent Nos. 1 to 3 are at liberty to pursue the pending interim application before the DRT strictly in accordance with law.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)