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

WRIT PETITION (L) NO. 71 OF 2022

Kotak Mahindra Bank Ltd.

.. Petitioner

Vs.

Nirvan Birla & Ors.

.. Respondents

Mr. Janak Dwarkadas, Senior Advocate a/w Mr. Ankit Lohia, Mr. Vikram Trivedi, Mr. Sachin Chandarana, Mr. Archit Shah, Ms. Rajvi Mehta i/by M/s. Manilal Kher Ambalal & Co. for petitioner.

Mr. Rafeeq Peermohindeen a/w Mr. T. N. Tripathi and Ms. Kalyani Wagle i/by T. N. Tripathi & Co. for respondent no.1.

**CORAM: DIPANKAR DATTA, CJ &
ANIL S. KILOR, J.**

DATE: JANUARY 21, 2022

PC:

1. This writ petition, at the instance of a secured creditor, is directed against an order dated 26th November, 2021 passed by the Debts Recovery Tribunal-II, Mumbai [hereafter "the DRT(II)", for short] on Securitisation Application No. 24 of 2015, being an application of the respondent no.1 under section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. By the impugned order, the petitioner has been directed

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to restore possession of the secured asset in favour of the respondent no.1 by 22nd January, 2022.

2. The petitioner/secured creditor, aggrieved by the order dated 26th November, 2021, has appealed before the Debts **Recovery Appellate Tribunal, Mumbai [hereafter "the DRAT(M)"]**, for short]; however, prior to preferring such appeal, it has instituted this writ petition.

3. The office of the Chairperson of the DRAT(M) being vacant, we entertain this writ petition having regard to the order dated 16th December, 2021 of the Supreme Court in Special Leave Petition No. 10911 of 2021 [**State Bar Council of Madhya Pradesh vs. Union of India**].

4. Mr. Dwarkadas, learned senior advocate appearing for the petitioner/secured creditor has assailed the order of the DRT(II) by submitting that it has decided the question of title, by transgressing its jurisdiction.

5. *PRIMA FACIE*, we are satisfied that an arguable issue is raised and that the petitioner is entitled to ad-interim relief.

6. In a different proceeding, a coordinate Bench of this Court has directed the Union of India to take appropriate steps for expeditious appointment of the Chairperson of the DRAT(M). Such proceeding is returnable in the first week of February, 2022.

7. We are of the considered opinion that if the Chairperson of the DRAT(M) is appointed in the near future, the petitioner would have to pursue its appeal before the Chairperson, DRAT(M). However, for the present, we consider it proper and in the interest of justice to direct that operation of clause (B)

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of paragraph (42) of the impugned order dated 26th November, 2021 shall remain stayed till 21st February, 2022 or until further orders, whichever is earlier.

8. The writ petition shall be listed on **17th February, 2022** when depending upon the developments, appropriate order is proposed to be passed.

(ANIL S. KILOR, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE