

vat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 520 OF 2015

Pradeep R. JagwaniPetitioner
Vs.
Bank of India and Ors.Respondents

WITH
CIVIL APPLICATION No. 569 OF 2015
IN
WRIT PETITION No.520 OF 2015

Bipinchandra D. PawaskarPetitioner
Vs.
Pradeep R. Jagwani ...Respondent

WITH
WRIT PETITION No. 8487 OF 2014
(Disposed of petition)

Mr.Praddep R.Jagwani ...Petitioner
Vs.
Mr. Jayaram K. Shetty ...Respondent

WITH
CIVIL APPLICATION No. 452 OF 2015
IN

WRIT PETITION No. 8487 OF 2014
Jayaram K. Shetty ...Petitioner
Vs.
Bank of India and ors. ...Respondents

Mr.Rohan H. Barge for Petitioners
Mr.U.A. Das i/b. O.A. Das & Associates for Respondent No.1
Mr.Kanishk Jayant for Respondent Nos. 5 and 6

CORAM : V. M. KANADE &
A. R. JOSHI, JJ

DATE : MARCH 04, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioner, Respondent No.1 Bank, the learned counsel appearing on behalf of the Principal Borrower.
2. The learned counsel appearing on behalf of the Principal Borrower submits that he has taken out an application under section 340 of the Cr.P.C. in the dismissal writ petition No. 8487 of 2014. He submitted that the said application may be heard first and, thereafter, the present writ petition No.520 of 2015 may be heard.
3. This submission has opposed by the learned counsel appearing on behalf of the Petitioner.
4. We are of the view that the said civil application which is filed in the disposal writ petition can be independently heard and disposed of after two weeks. We are therefore not inclined to adjourn the hearing of the present writ petition.
5. The Petitioner, by this petition, which is filed under Article 226 of the Constitution of India, is seeking the following reliefs:

“(a) It be ordered and to direct Respondent No.3 & 4 i.e. Recovery Officer & Presiding Officer of DRT II Pune, At Pune to execute & implement Order dated 18.09.2012 issued by R.O. Of MUMBAI DEBTS RECOVERY TRIBUNAL NO.1 At MUMBAI in then r.P. 89/2013 (Changed as R.P No. 126/2014) and give peaceful possession of the said Shop i.e. Shop No. 1H & 1I, Ground Floor, Chanakya Shopping

Centre, Plot No.5, Sector-06, C.B.D. Belapur, Navi Mumbai – 400061 admeasuring about 300 Sq.ft. to the petitioner within stipulated time in expeditious matter.

(b) It be ordered and to direct Respondent No.3 to act as per Recovery Certificate issued by Presiding Officer of DRT Mumbai III dated 20th August, 2009 as per statute within stipulated time.

(c) It be ordered and to direct the Respondent No.2 i.e. HDFC Bank to cancel the leave and license agreement executed between them and Respondent No. 6 concerned with the said shop and to comply with the Order dated 18.09.2012 issued by R.O. Of MUMBAI DEBTS RECOVERY TRIBUNAL NO.I At MUMBAI in then R.P. 89.2013 I Changed as R.P. No. 126/2014 Before DRT II, Pune)”

6. The grievance of the Petitioner is that though the order of the DRT has become final, the Recovery Officer is not executing the said decree. The Petitioner is an auction purchaser, who has purchased the said property in auction, which was held pursuant to the directions given by the Recovery Officer. After purchase of the said by the Petitioner, the sale was confirmed by the DRT. It is not in dispute that these orders have become final.

7. The learned counsel on behalf of the Principal Borrower has submitted that the complaint has been filed in the Court of the Metropolitan Magistrate against the Recovery Officer and also the Presiding Officer of the DRT and an order under section 156(3) of Cr.P.C. Has been passed by the Learned Metropolitan Magistrate. It is submitted that in view of this, the reliefs claimed by the Petitioners may

not be granted.

8. In our view, there is no merit in the submissions made by the learned counsel for the Principal Borrower. It is not in dispute that the property in question was auctioned, after the DRT has passed an award, in accordance with with the provisions of the Act, and thereafter, the property of the Principal Borrower was auctioned and it was purchased by the Petitioner. It appears that on account of various criminal complaints filed by the Principal Borrower, the Recovery Officer is not taking any steps for executing the award. The Bank has also not received any amount though the Petitioner has deposited the entire amount in the DRT. Under these circumstances, we are of the view that this is a fit case where a direction can be given to the Recovery Officer to execute the award. The writ petition is allowed in terms of prayer clause (a). The Presiding Officer shall complete this process within six weeks. Writ petition is, accordingly, disposed of in the aforesaid terms. Place the Civil Application filed by the Petitioners in the disposed of Writ Petition No. 8487 of 2014 on 18.3.2014.

[A.R. JOSHI, J.]

[V. M. KANADE, J.]