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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 3479 OF 2014

Mrs. Shinie B. NairPetitioner
Vs.
State of Maharashtra and Ors.Respondents

Mr.Anirban Tripathy for Petitioner
Ms. Gauri Rao -AGP for Respondent No.1
ms. gargi Bhagwan i/b. Divekar Bhagwat & Co. for Respondent No.3
Mr. Rajendra Sorankar for Respondent No.4

CORAM : V. M. KANADE &
B.P COLABAWALLA, J.J.

DATE : JULY 16, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioner and Respondents.
2. By this petition, which is filed under Article 226 of the Constitution of India, the Petitioner is seeking the following reliefs:
 - “a. that the Hon'ble Court be pleased to issue a writ of certiorari calling for records and proceedings before DRT Pune, and after going through the legality and validity of the same be pleased to quash and set aside the same;
 - b. that this Hon'ble Court be pleased to issue a writ of mandamus or any other , directions or writ of similar nature directing Respondent No.2 to waive the court fees payable by the Petitioner in respect of her Appeal filed under section 17 of The Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interests Act 2002 and Numbered as (L) 113 of 2014;

e. that this Hon'ble Court be pleased to issue a writ of mandamus directing the Ld. Magistrate to expeditiously execute the Execution Application of the Petitioner pending before her and take suitable actions as contemplated under section 31 of the Protection of Women from Domestic Violence Act, 2005.

f. that the Hon'ble Court be pleased to issue a writ of mandamus, directing the learned Civil Judge, Senior Division to expeditiously execute execution Application no. 38 of 2014 pending before him;

g. that Respondent No.2 be directed and to recover the court fees from Respondent No.4.”

3. The Petitioner and her husband had taken a loan from the Bank -Respondent No.3. It is an admitted position that the monthly installments have not been paid by both the husband and wife and as a result, the Bank has taken recourse for recovery of the secured assets under the Securitization Act. Therefore, the prayer clause (a) cannot be granted while exercising our writ jurisdiction under Article 226 of the Constitution of India. The Petitioner to take an appropriate proceeding before the DRT.

4. So far as prayer clause (b) is concerned, viz. payment of Court fees, Respondent No.4 has made a statement that he is ready to pay the court fees which is about Rs.1 lac. In view of this statement, prayer clause (b) does not survive. Respondent No.4 to make payment of court fees within one week from today.

5. So far as prayer clause (e) is concerned, this Court cannot direct the Magistrate, before whom the execution proceeding has been filed, for implementing the orders passed by him under the Protection of Women from Domestic Violence Act, 2005. In view of this, the prayer clause (e) does not survive. For the said reasons, prayer clause (f) also does not survive. Reserving the right of the Petitioner to make an application before an appropriate Forum, writ petition is disposed of.

6. The learned counsel appearing on behalf of the Respondent No.4 after taking instructions has submitted that he is willing to give 2 BHK flat on leave and license basis to the Petitioner in the event she is dispossessed by the Bank. The statement is accepted.

[B.P COLABAWALLA, J.]

[V. M. KANADE, J.]