IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION No.6764 OF 2015**

(Mrs. Priti Vipul Sangani Vs. CITI Bank N.A.)

| Office Notes, Office Memoranda of appearances, Court's orders or directions & Registrar's orders. | Court's or Judge's orders |
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Mr. Mayur Khandeparkar with Mr. Vivek Phadke, Advocate for the Petitioner.
Mr. Rohit Gupta with Mr. Sachin Chandrana and Mr. Akhil Tiwari, Advocate for the Respondent.

**CORAM : NARESH H. PATIL & S. B. SHUKRE, JJ.**

**DATED : 15th JULY, 2015.**

**P.C.** :

The petitioner challenges the order passed by the Presiding Officer, Debt Recovery Tribunal- III, (hereinafter called the "DRT" for short), Mumbai, dated 13.7.2015. The petitioner claims to be the joint owner of Flat No.A-1101, Eden Garden Opp. MCA Ground, Mahavir Nagar, Kandivali (W), Mumbai mortgaged as a security in relation to a loan transaction. One of the Directors of M/s. Megahertz Systems Pvt. Ltd. by communication dated 21st December, 2010 addressed to the Citi Bank, Mumbai, submitted original documents of the property, which is in the name of Vipul B. Sangani and the petitioner Mrs. Priti Vipul Sangani. Learned counsel appearing for the petitioner submits that depositing of original documents of the subject property in the year 2010 cannot be construed as mortgage in connection with subject loan transaction as there was no intention to create any mortgage. Learned counsel further submits that on 31st March, 2013 the Bank account of the company was categorised as a non performing assest and therefore it is hard to accept that the company's Director would attend the office of the respondent, submit the original documents concerning subject property and create a mortgage on 21.2.2013. Learned counsel has placed reliance upon the judgment of **Syndicate Bank vs. E.O. Manager**, reported in **AIR 2007 SC 3169**.

Learned counsel appearing for the respondent-Citi Bank has submitted that the mortgager is included in the definition of borrower in SARFAESI, Act. He further submits that the documents were submitted to the Bank in the year 2010 with the sole intention of mortgaging the subject property with the Bank in connection with and as a security for the said loan transaction. The petitioner though one of the co-owners did not raise any objection in respect of depositing of the original documents nor did she apply to the Bank for withdrawal of these documents. Learned counsel referred to the affidavit in reply filed by the Bank in the proceedings before the DRT. Learned counsel further referred to order passed by the Chief

Metropolitan Magistrate, Mumbai on separate application filed by the petitioner and her husband. It is submitted that the company of which the petitioner husband was a Director borrowed huge amount of Rs.6/- crores. The DRT after verifying entire records passed the order refusing any interim relief. The counsel submits that the Presiding Officer, DRAT is not available and, therefore, the petitioner has preferred the present petition, but without depositing any amount.

We have perused the record placed before us. The DRT of Mumbai which had gone through the original record observed in the order that the petitioner or her husband never made any complaint to the Bank regarding withholding of their title deeds. In the opinion of the DRT, depositing of original documents in the facts and circumstances of the case would make out a case of equitable mortgage. Original documents deposited by the petitioner have been lying with the Bank since the year 2010 and there has been no attempt by the owners to take them back. The DRT has gone through five documents of title deeds and has referred to the deed of confirmation by the petitioner and also the declaration signed by the petitioner.

In the light of these documents, and facts and circumstances, we find it difficult to prima facie hold that submitting of the original documents of the property with the Bank was without knowledge of the petitioner and the petitioner had no intention to allow these documents to be submitted by way of guarantee or the mortgage in connection with subject loan transaction. It is true that the Chairman of the DRAT is not available since quite some time at Mumbai and this is the reason for the petitioner to approach this Court. But, while filing the petition, the petitioner has not of her own account deposited any amount. The petitioner has also not shown any inclination regarding depositing of substantial amount before this Court.

In the circumstances, in exercise of extra ordinary writ jurisdiction we are not inclined to interfere into the matter.

Petition stands dismissed.

(S. B. SHUKRE, J.) (NARESH H. PATIL, J.)

Wadode