IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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APPEAL FROM ORDER (L) NO. 28297 OF 2015
WITH
CIVIL APPLICATION (L) NO. 28299 OF 2015
IN
APPEAL FROM ORDER (L) NO. 28297 OF 2015

Mrs. Sweta Tibrewal .. Plaintiff/Appellant
Vs.
Mr. Vinay Kumar Tibrewal & Ors. .. Defendants/Respondents

Mr. Shailendra Mishra a/w. Mr. Sharad Rai i/b ARM Legal for the Plaintiff/Appellant.
Mr. Akshay Vani i/b Vani & Associates for Defendant/Respondent Nos. 1 to 3.
Mr. P. Kumar Jain i/b Prakash Punjabi & Co. for Respondent Nos.4 & 5.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 29th OCTOBER, 2015.

P.C.

1. Rule. Made returnable forthwith.

2. The appeal is filed by the wife against her husband, the bank and some police officers. It relates to a suit filed by her in respect of a certain loan taken by her husband, on behalf of his company, and her mother-in-law in which she claims to have been entangled under forged documents. The appellant-wife lives in the flat which is stated to be mortgaged not only by the signatures of her husband and her mother-in-law but by herself also. She claims not to have visited the bank and signed any document.

3. The bank has initiated securitization action. The bank would be required to follow due legal process. The process would enure for the recovery of the amount.

4. Since the case of the wife would be wholly based upon oral

evidence and would be seen only in trial, Counsel on behalf of the wife has offered to deposit the value of the flat which is stated to be Rs.2.19 Cr. through her father. Hence, the loan which is taken by the company of the husband would be discharged upon such deposit and subject to the trial by the father-in-law of the husband who otherwise had nothing to do with the loan.

5. Consequently when even following due legal process, the bank would have its monies secured to the extent of the value of the flat in which the wife resides with her two minor children.

6. The bank would, of course, follow the same securitization procedure with the same earnest against the other properties of the company and/or the husband and the mother-in-law of the appellant-wife to recover the extent of the loan which is stated to be about Rs.19 Cr.

7. The Court presumes that the husband would be protected from the liability of repayment to the bank until the trial decides the forgery or otherwise as per the case of the wife.

8. In view of the aforesaid offer of deposit, the impugned order which has refused ad interim relief to the wife upon certain statement stated to have been incorrectly recorded upon which the findings have been arrived, requires to be set aside.

9. Hence the following order:

(a) The appellant-wife and/or her father shall deposit with respondent No.5 State Bank of India, Stressed Assets Management Branch-I, Mumbai Rs.2.19 Cr within 6 weeks from today.

(b) The amount shall be deposited in FDR of respondent No.5 and shall earn the usual interest offered by respondent No.5 thereon on a cumulative basis.

(c) The investment shall continue pending the suit.

(d) In view of the investment the procedure adopted for the securitization proceeding shall be taken to have been successfully culminated in the deposit.

(e) The deposit shall be kept invested subject to the ultimate result of the suit and all necessary appeals therefrom.

(f) The respondents, therefore, shall not disturb the peaceful possession of the appellant-wife along with her two minor children in the suit Flat Nos. D-1301A and D-1301B (amalgamated) on the 13th floor of 'D' Wing, Lakshchandi Apartment in ABC & D Co-operative Housing Society Ltd. at Krishnawatika Marg, Gen. A. K. Vaidya Marg, Gokuldham, Goregaon (East), Mumbai – 400 063 or dispossess her in any manner.

(g) The Appeal from Order and the Civil Application are disposed of accordingly.

(ROSHAN DALVI J.)