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

WRIT PETITION (L) No. 474 OF 2015

Akshay Chhabra and Anr. ....Petitioners
Vs.
Nandan Kundetkar and Ors. ....Respondents

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Mr. Dinesh Tiwari for Petitioners
Mr. Kamlesh Mishra i/b. SAVJ Law Solutions for Respondent Nos.1 to 3
Ms. Kavita Anchan i/b. M.V.Kini & Co. for Respondent No.4
Mr. Nikhil Wadikar i/b. Nandu Pawar for Respondent No.5

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

DATE : MARCH 26, 2015

P.C. :

1. This is a peculiar case where the Petitioner- principal borrower now is ready to pay the entire dues of the Citi Bank through PNB Housing Finance Ltd. This is sought to be done by making an agreement with Respondent Nos.1 to 3. The Petitioners have agreed to take a loan from PNB Housing Finance Ltd and purchase the property in question. Respondent Nos.1 to 3, however, have a rider to add to this transaction. According to them, the Citi Bank has charged penal interest where they were not entitled as they have not disbursed the entire sanctioned loan amount and, therefore, seeking leave of this Court to prosecute the City Bank to file an application against the Citi Bank for the penal interest which they have charged on the Petitioners' Bank. The Citi Bank, however, not agreeable to this liberty being granted by this Court.

2. In our view, since the Citi Bank is getting the entire amount which is acquired by them, the controversy can be resolved in the following manner:

(i) The PNB Housing Finance Ltd. shall pay the entire amount which is claimed by the Citi Bank to them by giving a demand draft. Thereafter, the Citi Bank give a 'No Dues Certificate' to the Petitioners.

(ii) At the moment, Respondent Nos.1 to 3 are in possession of the mortgage property. Upon receipt of balance payment i.e. Rs.2,57,55,059/-, they shall hand over the possession of the said property to the Petitioners within two days from today.

(iii) Upon the possession being handed over to the Petitioners, the PNB Housing Finance Ltd. Shall pay to the Citi Bank an amount of Rs.3,53,44,885/-.The Petitioners shall pay the balance amount which is claimed by the Citi Bank which is around Rs.3 to 4 lacs.

(iv) Upon the entire amount being paid to the Citi Bank, they shall issue a 'No Dues Certificate' in favour of the Respondent Nos.1 to 3 and hand over to PNB Housing Finance Ltd.

(v) After the said amount is paid, the Citi Bank shall hand over the original documents including Title Deed to the PNB Housing Finance Ltd.

(vi) The sale deed in favour of the Petitioners shall be executed by Respondent Nos.1 to 3 within four weeks thereafter upon the payment being made.

(vii) Lastly, it is clarified that upon the amount being paid to the Citi Bank, Account No. 230029 of Respondent No.1 shall be closed.

3. We do not propose to express any opinion about the rights of Respondent Nos.1 to 3 to prosecute the Citi Bank since it will not be necessary for this Court to grant any liberty to Respondent Nos.1 to 3 to take out any proceeding, if available in law. Writ Petition is disposed of in the aforesaid terms. Liberty is given to the counsel to file his Vakalatnama on behalf of the PNB Housing Finance Ltd. within one week.

[A.R.JOSHI, J.] [V. M. KANADE, J.]

Vaishali Tikam