

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

WRIT PETITION NO.686 OF 2015

M/s. Raj Construction, through
Mr. Ramesh G. Pandya, Sole Proprietor,
12-L, Lajpatrai Road, 21, Anandi Villa,
Vile Parle, Mumbai-400 056.

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Petitioner

Versus

1] Bank of Maharashtra,
Asset Recovery Branch, Mumbai Region,
6th Floor, Janmangal, 45/47, Mumbai Samachar,
Marg, Fort, Mumbai-400 023.

2] Mr. Vikram Pai,
C/o. Mamta S. Bhat,
403, Matoshree Tower, P.T. Marg,
Shivaji Park, Dadar,
Mumbai-400 016.

3] Mr. Samir Pandya,
503, Nariman Tower, Nariman Road,
Vile Parle (E), Mumbai-400 057.

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Respondents

Mr. Vishal Kanade with Mr. Manish P. Gitay for the petitioner,
Mr. Ismail A. Nasikwala for the respondent no.1,
Mr. Rakesh Singh i/b M/s. M.V. Kini & Co. for respondent no.2.

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

DATE : JULY 21, 2015.

P.C.

1] The petitioner – a borrower of respondent-Bank of Maharashtra filed an appeal before the Debts Recovery Appellate Tribunal at Mumbai (for short “DRAT”). Application for waiver of amount required to be deposited under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act, 2002”). By an order dated 1.5.2014, the Chairperson of the DRAT directed the petitioner to deposit 30% of the amount

with the Registrar of this Appellate Tribunal within a period of 5 weeks. The proceedings were adjourned to 6.6.2014. An order of status-quo was passed by the Appellate Tribunal till the next date.

2] The petitioner challenges the said order in this petition. On 6.6.2014, Vacation Court of this Court directed the respondent-Bank to maintain status-quo in respect of the Flat No.203. By an order dated 11.6.2014, the Division Bench of this Court directed continuation of interim order pending admission.

3] Learned counsel appearing for the petitioner submits that by auctioning the properties i.e. Flat No.201 and Flat No.203 owned by the petitioner, the Bank had collected an amount of Rs.2.40 crores. Therefore, the said amount which is lying with the Bank, shall be considered as statutory mandatory deposit for entertaining the appeal filed by the petitioner before DRAT. This issue was subject matter of Writ Petition No.2414 of 2013 along with Writ Petition No.2512 of 2013 (Vasanji Asaria Mamania .vs. M/s. Kalyani Exporters and others). The Division Bench of this Court took a view that the borrower cannot file an application to the DRAT that the sale proceeds from the auction should be adjusted towards the money which is directed to be deposited by DRAT under Section 18 of the said Act and at the same time challenge the sale. Learned counsel appearing for the petitioner produced the said judgment. It is submitted that the issue raised in this petition is already covered. It is submitted that the petitioner along with his family resides in Flat No.201 since last several years. Learned counsel submits that the petitioner is trying to work out final solution in respect of the concerned issue. He has raised substantial issue in the appeal according to the learned counsel. In this view of the matter, learned counsel prays that order of status quo may be continued for a further period. Learned counsel further submits that the Chairperson of DRAT is not available for judicial work under SARFAESI Act, 2002 for sometime. It is not disputed that the charge of the DRAT, Mumbai is held by the Chairperson of the Tribunal at Chennai.

4] Learned counsel appearing for the respondent-Bank submits that consequent to the proceedings initiated under the SARFAESI Act, 2002, both the flats

of the petitioner i.e. Flat No.201 and Flat No.203, in the same apartment, have been sold by auction. An amount of Rs.2.40 crores has been already recovered. Learned counsel submits that the possession of Flat No.201 and Flat No.203 is required to be handed over to the purchaser. In view of the order of status quo passed by this Court, in spite of the flats being auctioned in the year October, 2013, possession could not be handed over. Learned counsel further submits that the amount received in the auction proceedings has been kept in “no lien account” as order of status quo was passed by this court. Learned counsel, therefore, submits that in view of the judgment of this court, as referred above, the petition deserves dismissal.

5] Mr. Vikram Pai and Mr. Samir Pandya were added as party respondents to the petition being purchasers of Flat No.203. Learned counsel appearing for them submits that the possession of the said property has not been handed over in spite of the fact that they had paid entire amount in February, 2014.

6] Learned counsel for the petitioner submits that in one of the purchasers did not pay the amount in time.

7] We have perused the record placed before us and the judgment cited above. In the light of the view adopted by the Division Bench of this Court, as referred above, the issue is covered and the petition could be disposed of accordingly. We do not express any opinion in respect of the issues raised on merits of the matter.

8] The respondent-Bank is entitled to hand over vacant possession of Flat No.203 to the purchaser. The respondent-Bank shall maintain status quo in respect of possession of Flat No.201 for a period of three weeks. Parties to maintain status quo in respect of possession of Flat No.201. The purchaser of Flat No.203 shall not create any third party interest.

[S.B. SHUKRE, J.]

[NARESH H. PATIL, J.]