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

COMPANY APPLICATION (L) NO. 567 OF 2015
IN
COMPANY APPLICATION NO. 368 OF 2014
IN
COMPANY PETITION NO.503 OF 2012

Dhanlaxmi Bank Ltd. ...Applicant
In the matter between
Southern Engineers ...Petitioner
vs
Vibha Mechano Electric India Pvt. Ltd. ...Respondent.

WITH
COMPANY APPLICATION (L) NO. 579 OF 2015
IN
COMPANY APPLICATION NO. 486 OF 2015
IN
COMPANY PETITION NO.503 OF 2012

Champaben Chunilal Mistry ...Applicant
In the matter between
Southern Engineers ...Petitioner
vs
Vibha Mechano Electric India Pvt. Ltd. ...Respondent.
And
Dhanlaxmi Bank Ltd. ...Proposed Respondent.

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Mr Vedchetan Patil i/b Juhi Bhangde for the Applicant in CAL No.579 of 2015
Mr Siddharth Murarka for the Petitioner
Mr Fraser Alexander i/b Majmudar & Partners for the Applicant in CAL No.567 of 2015.

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CORAM : S.C. GUPTE, J.
JULY 29, 2015

P.C. :

Company Application (L) No. 567 of 2015 concerns two flats, (i) Flat No.B-804, Vrundavan CHSL, 8th floor, B-wing, Poisar village**,** Borivali (West), Mumbai and (ii) flat No.307, 3rd floor, Yogi Sagar Co-operative Housing Society Ltd.,Plot No.K-52, Vijay Nagar Corporation at village Eksar, Borivali, Mumbai.

These two flats are respectively owned by Chetan Chunilal Mistry and Champaben Chunilal Mistry. The Company Application seeks an order for delivery of physical possession of these two flats by their respective occupants, namely, Chetan Mistry and Champaben Mistry, to the Applicant Bank. The application is on the footing that these two flats form part of the assets which are held as a security by the Bank for advances given by it to the company in liquidation. It is the Bank's case that these two flats were mortgaged to the bank by their respective owners who stood surety for the finance made available to the company in liquidation. It is the case of the Applicant that the Applicant is entitled to securitize these assets by bringing them to sale under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"). The Applicant Bank has issued not only notices under Sections 13(2) and 13(4) of the SARFAESI Act in respect of these flats, but also obtained orders from the court of the Metropolitan Magistrate for possession of these flats. It so happens that before the Applicant Bank could take possession of the flats, the Official Liquidator has taken symbolic possession in pursuance of the liquidation proceedings against the company. (The respondent company was ordered to be wound up by an order passed by this Court on 4 July 2014.) Both the Petitioning Creditors as well as the Respondent company appear to have proceeded on the footing that these two flats belong to company in liquidation. It appears that, in the premises, the Official Liquidator has proceeded to take symbolic possession of the flats. Having regard to these developments, the Applicant Bank moved a company application, being Company Application No.27 of 2015, for permission of the Company Court to take physical possession of these two flats and to exercise its rights including the right to make auction sale of the flats in accordance with the provisions of the SARFAESI Act. The Applicant also sought an order for modification of the earlier order passed by the Company Court to take symbolic possession of the registered office and other immovable assets of the company in liquidation. (It appears that the registered office of the company was at flat No.307 of the ownership of Champaben Chunilal Mistry.) On this application, by consent of parties, namely, the Applicant and the Official Liquidator, the following order was passed on 14 March 2015:

> " (i) The Applicant Bank shall sell both the flats set out in prayer clause (a) of the Company Application in association with the Official Liquidator. The Bank shall retain the sale proceeds and bring back the same to this Court with interest if so directed by the Court in future. However, all contentions of the Bank and the Petitioner as regards the sale proceeds are kept open. The Official Liquidator is also directed to file his Report within a period of one week from today seeking necessary directions from the Court to sell the other properties of the Company in liquidation."

2 Though the Applicant Bank was allowed to sell both flats in association with the Official Liquidator and proceeded to forward the requisite documents and particulars of sale to the Official Liquidator, the Latter did not respond to the same. In the premises, the Applicant Bank moved another company application, being Company Application (L) No.319 of 2015, seeking the following reliefs:

> " (a) that this Hon'ble Court be pleased to accept the reserve price fixed by the Bank as set out in the draft sale notice annexed to this Application;
>
> (b) the Applicant Bank be permitted to fix the date of sale and make publication of the sale notice of the flats in two newspapers, one in Engish and the other in vernacular language."

On 29 April 2015, this company application was allowed by the Company Court by granting both prayers.

3 After the Bank advertised the flats for sale on 7 July 2015, Champaben Chunilal Mistry, the owner of flat No.307, filed the present application, namely, Company Application (L) No. 579 of 2015, seeking a stay of the two orders of the Company Court noted above, namely, orders dated 18 March 2015 and 29 April 2015. The application also seeks to stay the auction sale to be held on 11 August 2015 by the Applicant Bank. The application is on the footing that these two flats are owned, respectively, by Champaben Mistry

and Chetan Mistry and not by the company in liquidation, and the Company Court has no jurisdiction to order sale of the flats.

4 It is admitted by the Applicant Bank that these two flats do not belong to the Company in liquidation. In fact, that was the basis of its earlier application before this Court, namely, Company Application No. 27 of 2015. It is also not the Official Liquidator's case that these two flats belong to the Company. The Petitioning Creditor also cannot point out any material to show that these two flats belong to the Company.

5 Having regard to this position, the earlier orders passed by this Court on the basis that these flats belong to the Company in liquidation will have to be suitably clarified.

6 As for the prayers made by the Applicant in Company Application (L) No. 579 of 2015 for not permitting sale of the flats without first seeking to auction the properties of the Company described in prayer clause 4 of the Company Application and on that basis, staying the auction sale of the two flats, the two flats not being of the ownership of the Company in liquidation as clarified above, the Company Court obviously cannot proceed to pass any order either in respect of the sale proposed to be held or the manner in which the Applicant Bank can securitize its assets. That clearly is a matter for the Debt Recovery Tribunal to determine under the SARFAESI Act.

7 Accordingly, the following order is passed:

(i) It is clarified that the two flats described above, namely, Flat Nos. 804 and 307, are not the property of the Company in liquidation;

(ii) It is clarified that the sale to be conducted by the Applicant Bank need not be in association with the Official Liquidator and the directions of the Company Court in the order dated 18 March 2015 in that behalf stand modified to that extent;

(iii) It is clarified that the Company Court has no objection to the Applicant Bank conducting the sale of the two flats under the provisions of the SARFAESI Act**;**

(iv) The symbolic possession taken by the Official Liquidator of the two flats stands vacated;

(v) The rights and contentions of the parties under the SARFAESI Act in respect of the sale to be conducted by the Applicant Bank of the flats described above are kept open;

(vi) Company Application (L) No. 567 of 2015 and Company Application (L) No. 579 of 2015 are disposed of accordingly.

(S.C.GUPTE J.)