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

WRIT PETITION (L) NO.3238 OF 2015

Aditi Tapuriah ... Petitioner
versus
Axis Bank Limited and others ... Respondents

Mr.Mathews J. Nedumpara with Mr.Nishant Sangle for Petitioner.

Mr.Chetan Kapadia with Mr.Shashank Fadia and Uma Fadia for Respondent Bank.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 20 November 2015

PC :

By this petition under Article 226 of the Constitution of India, the Petitioner is claiming a declaration that the order dated 29 October 2015 passed by the Debts Recovery Appellate Tribunal (`DRAT') is bad in law and not binding on the Petitioner. The next prayer in the petition is that the order passed deprives the Petitioner of a right to appeal under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (`Securitization Act'). The third prayer which is based on the assertion through-out that the Petitioner is not liable to be dispossessed of a residential home more particularly described in prayer clause (c) at page 16 of the petition and the remedy of the bank, therefore, is not to take recourse to Securitization Act or Sections 13(4) and 14(1) thereof, but to file a suit in the competent Civil Court.

2. The order passed on 29 October 2015 by the learned Chairperson of DRAT at Mumbai is on a Miscellaneous Appeal No.17 of 2014. That was filed by the Petitioner before us. That challenged an order passed by Debts Recovery Tribunal (`DRT') on 24 December 2012 rejecting a prayer of the Petitioner-Appellant/Applicant for interim injunction/relief. That application for interim relief was made in Securitization Application No.83 of 2013.

3. In substance, therefore, the argument is that the measures under the Securitization Act have been challenged in the miscellaneous appeal. The Petitioner is a lady and she claims that the property in question has been mortgaged by the Karta of HUF of which she is a member. The actions of Karta cannot bind her and for the reasons that she has indicated in the securitization application.

4. The matter was moved urgently as Mr.Nedumpara, on instructions, stated that representatives of the First

Respondent Bank have reached the site and trying to take possession of the property. Later on, on instructions, he states that recording of inventory has begun at the site and that is after the bank has taken possession of the premises.

5. The learned counsel for the Petitioner has not addressed us on the merits of the appeal before DRAT but essentially on the approach of the learned Chairperson in dealing with the miscellaneous appeal. Mr.Nedumpara would submit that the order exhibits bias and prejudice of the learned Chairperson. The learned Chairperson has proceeded on the footing that the Petitioner's advocates, who ordinarily do not appear before DRT or DRAT, have remained behind the scene but have brought two advocates purportedly engaged by the Petitioner-Appellant. These two advocates did not, according to the learned Chairperson, complete the formality of filing Vakalatnama. However, all the observations in the order under challenge are directed against the advocates. It is in these circumstances that he would submit that biased and prejudicial approach of the learned Chairperson vitiates the impugned order. Reliance is placed upon the observations in paragraph 94 of the judgment of Hon'ble Supreme Court of India in "The Special Courts Bill, 1978". That judgment is reported in AIR-1979-SC-478. Our attention is invited to paragraph 94 at page 517 of the judgment. This is to persuade this Court to take a view that in the absence of an opportunity to a litigant to seek

transfer of a case from one Presiding Officer or Judge to another, that may result in justice being denied. Therefore, this Court should issue appropriate orders and directions.

6. When such petitions are moved before us, we give them some priority and take them out of turn simply because the Petitioner states he/she is likely to be dispossessed. Whenever the parties are likely to be dispossessed of their residential premises and complain that they would be deprived of shelter or roof over their head, that in order to render justice, we give them listing out of turn. We then try and give them patient and complete hearing. This is in order to meet the test that justice must not only be done but must be seen to have been done.

7. In the present case as well, we have not gone by any of the observations in the order under challenge on the conduct of the advocates. We have considered the matter on the footing that the Petitioner-Appellant moved and filed an appeal aggrieved by the refusal of the interim relief. The interim relief was to restrain the Respondent no.1 bank from acting in furtherance of the notice under sub-Section 2 of Section 13 of Securitization Act, which came to be issued on 18 November 2011. The bank has also taken recourse to sub-Section 4 of Section 13 and in that regard the Chief Metropolitan Magistrate, Mumbai passed an order under sub-Section 1 of Section 14 of

the Securitization Act. The correctness of this order that is what has been essentially gone into by us even though the advocate for the Petitioner would fairly state that he has nothing to say on the merits of the appeal. We have found that the learned Chairperson in paragraphs 3 to 5 of the impugned order has referred to the basic facts. He has found that the amount due is about Rs.2,000 lakh with interest. He has found that the Petitioner-Appellant claims to be a a member of Hindu Undivided Family (`HUF'). She states that she is in possession of the property and unaware of any dealings. She would submit that the Karta of HUF could not have created any mortgage on the immovable property of HUF and that is why she is unaware of any of the dealings. However, the learned Chairperson has observed that there is no document to show that there was any HUF and of which the Petitioner is a member. That is why the DRAT has rightly considered the case as not fit for grant of interim relief.

8. The argument of Mr.Nedumpara is that there are number of documents which would indicate as to how there was HUF and that the Petitioner is a member thereof. Once the learned Presiding Officer is biased and prejudiced, then there is no point in referring to this material on merits and that is why the Petitioner, though having voluminous evidence and a complete record, has not raised the same. The Petitioner could have produced it, provided, the learned Presiding Officer had an open mind.

9. We have found that there was an interlocutory application made in Securitization Appeal No.83 of 2013. The said application was placed before the learned Presiding Officer. The learned Presiding Officer, after hearing the Petitioner on an application, has passed an order and which is to be be found on pages 91 to 93 of the paper book. According to Mr.Nedumpara, even the DRT has failed to render justice. That is why the Petitioner approached the DRAT and in the hope that it would take due note and cognizance of the grievance of the Petitioner and redress it.

10. The entire petition and the annexures have been perused by us. We find that in relation to the same property, some members of the family have approached this Court and with identical prayers. It was pointed out by them as well that they are members of an HUF. That HUF properties are being dealt with and to their detriment and to their prejudice. In these circumstances, the Court should restrain the bank from taking possession. However, the bank pointed out and that is how the authorities under the Securitization Act have proceeded that there was a company M/s.Traxpro Enterprises Private Limited. That credit facility and financial assistance in the sum of Rs.2,000 lakh was extended to the said company. That the said borrower failed to repay the loan amount. M/s.Traxpro Enterprises Private Limited, Mr.Sudarshan Kumar Tapuriah and others from the family have secured the said loan by creating

equitable mortgage. The title deeds of three flats have been deposited with the Respondent no.1 bank. It was urged that the said M/s.Traxpro Enterpriese Private Limited, Mr.Sudarshan Kumar Tapuriah and other family members have committed default. Therefore, the loan amount was classified and transferred under the category "non performing". The requisite notices were issued under Section 13(2) of Securitization Act. The Respondent no.1 bank found that there was no objection thereto and that is how it approached the Magistrate to assist it to take possession of the mortgaged properties. On that application, an order has been passed on 7 February 2013, a copy whereof is annexed at pages 34 and 35 of the paper book. The said action is preceded by a notice under Section 13(2) of the Securitization Act, a copy whereof is annexed at page 29 of the paper book.

11. Once we find that the Presiding Officer of DRAT has not approached the matter by any preconceived notions and/or prejudiced or biased mind, but has gone through the entire material and found that the Petitioner could not substantiate her claim even prima facie, then, we do not find any reason to interfere with the order under challenge. The writ petition is devoid of merits and is dismissed with no order as to costs.

12. At this stage, Mr.Nedumpara submits that against this Court's earlier orders and in the case of the Petitioner

herself, a Special Leave Petition has been filed in the Supreme Court of India. It was mentioned by Mr.Nedumpara on 19 November 2015 that the same is listed on 23 November 2015. Therefore, this Court should protect the Petitioner till then to enable her to challenge even this order in the Supreme Court. Mr.Kapadia appearing for Respondent no.1 bank opposes this request.

13. We have heard learned counsel on this point. When this matter was mentioned on two occasions, on both occasions, it was stated that the bank has already reached the site to take possession. On instructions, a statement was made that even an inventory of the articles and belongings inside the flat is being prepared. In the circumstances, no useful purpose will be served by granting ad-interim relief at this stage and once we have rejected the petition. The request is, therefore, refused.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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