

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2141 OF 2016

Mrs. Maya Anil Malhotra	 Petitioner
Vs.	
Authorised Officer/Chief Manager, Bank of India & Anr.	 Respondents

WITH
CIVIL APPLICATION NO.990 OF 2016
IN
WRIT PETITION NO.2141 OF 2016

Bank of India	 Applicant
<i>In the matter of:</i>	
Mrs. Maya Anil Malhotra	 Petitioner
Vs.	
Bank of India & Anr.	 Respondents

Mr. Ashok D. Shetty with Mr. Uday Wavikar,
Ms Rita K. Joshi and Mr. Swapnil P. Kamble for
the Petitioner.
Mr. O.A. Das for the Respondent No.1 in the
Petition and the Applicant in the Application.
Mr. M.S. Menon i/by Asif Siddique & Associates
for Respondent No.2 in both matters.

CORAM: S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR JOSHI, JJ.

DATE : APRIL 27, 2016

P.C:

1. When this civil application was placed before us and we heard both sides on the issue of maintainability of the writ petition, it was fairly conceded that the petitioner has an alternate, equally efficacious remedy. The petitioner can bring such proceedings as are permissible in law for establishing her right and interest in an immoveable property. This Court is not concerned with the said issue nor can it be adjudicated and decided in our limited jurisdiction.

2. The petitioner has in this petition requested this Court to protect her possession and on 22-3-2016, after hearing the petitioner, this Court had passed an order.

3. It was claimed that none appeared for the respondents on that day. Mr. Das, however, submits that it is not correct for the order is passed *ex parte*.

4. We have perused the order passed on 22-3-2016. Though the respondent No.2 claims that he is the borrower and the Bank advanced monies to him, he denies that he created an interest in favour of the petitioner, the petitioner comes forward and says that she would pay the Bank's dues in its entirety. There is a conditional proposal to settle the claim of the Bank. The respondent No.2 denies any relationship, much less that of a husband and wife and as between the petitioner and the second respondent. In such circumstances, the petitioner is aware that her remedy lies elsewhere. In these proceedings, she can neither claim a declaration of being the legally wedded wife of the second respondent or being a co-owner of the flat. Once this was the nature of the claim and dispute, the petitioner can avail of such remedies as are permissible in law. We decline to exercise our writ jurisdiction.

5. The writ petition is disposed of with the consent of both sides and leaving open all issues and controversies as between all the parties to the writ petition. The

Bank/respondent No.1 is right in urging that the order passed on 22-3-2016 restraining it from taking possession of the flat in question, without obtaining an order from the Chief Metropolitan Magistrate under Section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 seriously prejudices it.

6. In the circumstances, we direct that, without prejudice to the rights and contentions of all parties, the order of 22-3-2016 in the present petition shall continue for a period of four weeks from today. During this time, the petitioner must approach the Competent Court or Authority and claim such reliefs as are permissible in law. It is only to facilitate the filing of a substantive proceeding that we continue this ad-interim order. We clarify that we have not expressed any opinion on the rival contentions. Our order continuing the earlier protection shall not be construed as any expression of opinion and no Court or Authority is bound to continue this order. Everything would be decided by the Competent Courts or Tribunals on their own

merits and in accordance with law.

7. The writ petition and the civil application both are disposed of.

(DR. SHALINI PHANSALKAR JOSHI, J.)

(S.C. DHARMADHIKARI, J.)