

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5408 OF 2015

Shri. Rajendra S/o Sopanrao Bhujbal and another. ... Petitioners.
V/s.
India Bank and others. ... Respondents.

Anup Khaitan i/b. M/s.Anup Khaitan & Co. for the petitioners.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 25th October 2016.

PC. :

The writ petitioners before us were actually the interveners rather approached Debt Recovery Tribunal (DRT) with an application that the proceedings taken by the creditor Bank against the respondent Nos.2 to 3/original defendants, the borrowers was behind the back of the real owner who said to have purchased the property in the year 2005 from the person who had right, title and interest to convey the property in favour of the present petitioners. Apparently, the order favourable to the present petitioners came to be passed by the DRT by setting aside all the proceedings including certificate. Aggrieved by the said order, the respondent- Bank approached Debt Recovery Appellate Tribunal (DRAT) by filing Appeal No.48/2009. The appeal came to be disposed of by DRAT by order dated 12th February 2015 opining that the date of mortgage by

the Bank is 2nd January 2002 and the third party purchaser i.e. the present petitioner purchased the said property in the year 2005. The Bank had advanced loan to respondent Nos.1 and 2 before DRT, in the year 2002. The Original Application came to be decided on 2nd January 2006. The Bank had issued a cheque of Rs.16 lakh in favour of M/s.Regal Enterprises who was the Power of Attorney Holder of the promoter of the building. According to the Bank, M/s.Regal Enterprises were competent to deal with the property, but DRAT found, on perusal of records, that only M/s.Anand Developers was admittedly a builder who was in-charge of the building. Therefore, according to DRAT, the amount in question paid by the Bank to M/s.Regal Enterprises was correct one and the respondents were not entitled to claim any relief against the Bank, the appellant before DRAT. It was further opined that if at all the respondents feel that they were cheated by the promoter, they are at liberty to file appropriate proceedings before appropriate authority and the order of DRAT will not come in the way of such proceedings. It is also opined that after obtaining decree and attachment on the flat in question by the DRT the respondent before DRT have taken steps claiming the property. Whether the present petitioners had acquired right, title and interest in the property in question becomes a disputed question of fact since they have to establish the alleged fraud played by the borrower, developer on the owner, if at all they all colluded to cheat not only the creditor Bank but also the subsequent purchaser. In other words, the title of the present petitioner over the property in question said to have been acquired in 2005 is under cloud which cannot be declared in the petition filed under Article 226 of the Constitution but the petitioner has to approach the

appropriate forum for redressal of his grievances. Since DRAT has opined that none of the observations of DRAT and the orders would come in the way of third party rights, we find that no prejudice would be caused to the present petitioners by the impugned order. We, therefore, decline to interfere with the said order. With these observations, the petition is disposed of.

2. In view of disposal of writ petition, civil application does not survive and the same stands disposed of accordingly.

(M.S.SONAK, J.)

CHIEF JUSTICE