

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6025 OF 2016

Bhavesh Pancha Patel Petitioner
V/s.
Dewan Housing Finance Ltd., Mumbai & Ors. Respondents

Mr. Satish Shetye, i/by M/s. Kansara &
Thanekar, for the Petitioner.

Mr. R.L. Motwani for Respondent No.1.

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

DATE : 7TH JUNE, 2016.

P.C. :

1. Having heard Mr. Shetye, learned counsel appearing on behalf of the Petitioner, and Mr. Motwani, learned counsel appearing on behalf of the contesting Respondent No.1-Dewan Housing Finance Limited, who is stated to have disbursed housing loan to the Petitioner, we are of the view that, in writ jurisdiction, we cannot resolve factual issue, particularly when the Petitioner has alternate equally efficacious remedy of an Appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The apprehension of Mr. Shetye appearing for the Petitioner is that in pursuance of an order of the learned Chief Metropolitan Magistrate, Mumbai, the Petitioner would be dispossessed tomorrow from a flat,

which is a residential premises. The Petitioner resides therein with his family.

3. In the circumstances and with a view to enable the Petitioner to avail of the alternate remedy, we direct that Respondent No.1-Finance Corporation shall take symbolic possession of the Petitioner's premises. The Petitioner shall not be physically dispossessed from the premises in question for a period of four weeks from today.

4. In the meanwhile, the Petitioner shall file an Appeal and also deposit a sum of Rs.2,00,000/- without prejudice to the rights and contentions of the Petitioner with Respondent No.1-Finance Corporation.

5. This order is passed because Mr. Shetye states that the Petitioner is in physical possession of the premises with his family members and he will not alienate, encumber or part with possession, nor create any third party rights in any manner in respect thereof.

6. Writ Petition is disposed of by keeping open contentions of both the parties.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]