IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7480 OF 2014

Mrs. Meherangiz J. Rangoonwalla and anr. .. Petitioners
V/s.
The Authorised Officer,
State Bank of India and ors. .. Respondents.

Ms Armin Wandrewala a/w. Ms Meenaz Merchant i/b Mr. Haresh G. Ganatra for the Petitioners.
Mr. D.S. Paranjape for Respondent No.1.

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

DATE : 30 AUGUST 2016.

P.C.

1] Heard learned counsel for the parties.

2] This petition is directed against the order dated 20 November 2013 passed by the Debts Recovery Appellate Tribunal, Mumbai in Appeal No. 273 of 2013 connected with M.A. No. 886 of 2013.

3] In brief the facts that lead to filing of the present petition are as under:

One M/s. Alwyn Alloys Private Limited, a registered company registered under the Companies Act had approached the respondent No.1 bank for financial assistance and accordingly, the respondent No.1 bank had extended various financial facilities to the respondent No.2 company. As a security, the property in question was mortgaged, which is a flat/apartment, i.e. Flat No. C-203, on the 2nd Floor of Blue Heaven Apartment 'C' Wing Rebellow Road, Bandra (West), Mumbai. Apparently, the Directors of the company were the guarantors for the credit facilities extended to the 2nd respondent company .

3] The writ petitioners approached the Tribunal contending that behind the back of the petitioners the fraud is committed at the instance of respondent Nos.2 to 5 by securing the flat in question, which is the absolute property of the petitioner No.1 (appellant No.1 in Appeal No. 273 of 2013). In order to substantiate their contention, the writ petitioners contend that the credit facility of Rs.4 Crores was extended to 2nd respondent company and the property worth about Rs.60 Lacs alone was the security offered that too without the original Share Certificate or any other documents. It is further contended that there was no marketable title with respondent Nos.2 to 5 when the alleged equitable mortgage by deposit of the title deeds said to have been created in favour of the 1st respondent herein.

4] As it could be seen from the records and ascertained from the submissions made across the bar, respondent Nos.2 to 5 said to have filed a suit against the present writ petitioners, which came to be dismissed for non-prosecution after several adjournments. The said suit was for declaration of title and also for possession of the property. Respondent Nos.2 to 5 had admitted that the writ petitioner No.1 is in possession of the property in question. However, symbolic possession is taken over by the 1st respondent as ascertained from the records.

5] Very conveniently, to the disadvantage of both the contesting parties here, respondent Nos.2 to 5 have remained absent without making their stand clear in the writ petition, so also before the Debts Recovery Tribunal and the Appellate Tribunal as well. The entire case of the writ petitioners is that when the writ petitioner No.1 was absolute owner of the property, by misrepresentation, respondent Nos.2 to 5 created alleged equitable mortgage by deposit of title deeds, by which no rights or interests seem to have created in favour of 1st respondent so as to bring the property for sale for recovery of the amount. However, this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot go into the factual issues either with regard to marketable title of the writ petitioners or any interest that could have been parted with by respondent Nos.2 to 5 under the so called mortgage. Similarly, we cannot opine whether 1st respondent bank had acquired any interests or rights under the so called equitable mortgage by depositing the title deed. These are all controversies, which require evidence and a full fledged trial giving parties full opportunity to bring on record relevant facts in terms of pleadings and then fight out the case on merits. The fact remains that the petitioner No.1 is in physical possession of the property. Since several factual issues have to be gone into as indicated above, we are of the opinion that the writ petitioners should have an opportunity to contest the matter before proper forum where all these issues can be agitated

6] Accordingly, we dispose of the writ petition with the following directions:

a] Period of 8 weeks is granted for the writ petitioners to approach proper forum to get adjudication of the rights of the writ petitioners as contended in the writ petition and within the said period of 8 weeks, they shall file and seek proper interim relief in their favour. Till expiry of 8 weeks, the 1st respondent bank shall not proceed with the matter in terms of the order obtained by them before Debts Recovery Tribunal so far as the property in question;

b] Amount of Rs.25 Lacs shall be deposited in an interest earning deposit, by the respondent No.1 bank and profits of the said deposit shall enure to the benefits of the parties, who become successful in the litigation; and

c] No order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)