IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) NO. 24295 OF 2016
WITH
WRIT PETITION NO. 9825 OF 2016

Murad Anwar Jetha ... Petitioner
Vs
1. Asset Reconstruction Company (India) Ltd. & Ors. .. Respondents

WITH
WRIT PETITION (St.) NO. 24296 OF 2016
WITH
WRIT PETITION (St) NO. 20090 OF 2016

Sravanya Rao Meka ... Petitioner
Vs
1. Asset Reconstruction Company (India) Ltd. & Ors. .. Respondents

Mr. Nitin Thakkar, senior counsel with Mr. Zoeb Cutlerywala i/b Mr. K.P. Shah in WP (St) No. 24295 of 2016 and i/b ALMT Legal in WP (St) No. 24296 of 2016, for the Petitioner.

Mr. Nitin Thakkar, senior counsel i/b Mr. Raval Shah for the Petitioner in WP No.9825 of 2016 and WP (St) No.20090 of 2016.

Mr. Venkatesh Dhond, senior counsel with Mr. Shakib Dhorajiwala, Mr. Haresh Mayia i/b M/s. Vidhi Partners for the Respondent No.1 in all Writ Petitions.

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

TUESDAY, 6TH SEPTEMBER, 2016

P.C. :

1 A writ petition being Writ Petition (Stamp) No. 24295 of 2016 challenges the interim as well as the final order of the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai. These proceedings are under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act").

2 The petitioner in this petition claims that he is a lawful tenant of respondent No.3 who is the landlord. Respondent Nos.4 and 5 are the guarantors and who have guaranteed the dues of the bank and now the Asset Reconstruction Company – Respondent No.1. The dues were arising out of a financial loan availed of by the second respondent.

3 It is in these circumstances and when there was a default committed that the SARFAESI Act was invoked and eventually assistance of the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, was sought so as to take the measures under sub-section (4) of section 13 of the Act. That is

how he passed the impugned orders.

4 Similar is the case with Writ Petition (St) No. 24296 of 2016, but there the petitioner claims to be a lawful tenant in respect of the first floor of a bungalow, more particularly described in petition paragraph No.1.

5 The earlier petition concerned the ground floor.

6 Upon such petitions and the companion ones which challenge the final order, but not the interim orders during the course of the proceedings before the learned Metropolitan Magistrate, Mr. Thakkar, the learned senior counsel appearing for the petitioners in all such petitions states that he has instructions to file undertakings on behalf of the petitioner Murad Anwar Jetha in Writ Petition (Stamp) No. 24295 of 2016 with Writ Petition No. 9825 of 2016 and of Sravanya Rao Meka being the petitioner in Writ Petition (St) No. 24296 of 23016 with Writ Petition (St) No. 20090 of 2016. That these petitioners would give up their claim of tenancy as raised in the writ petition and before the Additional Chief Metropolitan

Magistrate. They would also give up their contest as far as the proceedings under the SARFAESI Act, but pray that on their undertakings being filed, this Court should pass an order protecting their physical possession till 15th December, 2016.

7 This relief is sought essentially in the backdrop of the petitioner Sravanya in both petitions being in her seventh month of pregnancy. For sentimental reasons and on account of her attachment to the place, she would like that till the required period of pregnancy is over, she should be allowed to retain the premises. She would not induct any third party nor transfer the property or the premises in any manner. She is in physical possession of the premises presently. Similar is the case of Murad and he has no independent right, title and interest in the property, save and except that at one time he was an employee of the borrower company.

8 Mr. Thakkar, however, clarifies that the bank has a huge monetary claim and pending in substantive proceedings. Those proceedings are under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "RDDB Act, 1993").

The borrowers would like to contest those proceedings and this order should not conclude their rights and contentions in the proceedings.

9 We had, on the earlier occasion, recorded above statements made by Mr. Thakkar on instructions. Today Mr. Thakkar produces undertakings of both Murad Anwar Jetha and Sravanya Rao Meka.

10 These undertakings record that parties withdraw their respective suits filed in the Court of Small Causes at Mumbai claiming right of tenancy in respect of the ground and first floor premises. They record the further undertakings of these parties not to claim any right in relation to these premises. They record the undertakings that these parties do not contest the claim of respondent No.1 nor will contest it before any Court / Tribunal / Forum. As far as these parties are concerned, they purely want an accommodation and protection against dispossession upto 15th December, 2016. The copies of these undertakings placed on affidavit have been handed over to the first respondent's advocate and for perusal. He has

perused them and has stated that as far as the respondent No.1 is concerned, they would leave the matter to the Court.

11 After having perused these affidavits-cum-undertakings, we enquired from Mr. Thakkar as to whether before the undertakings are duly signed by these petitioners have they been explained and interpreted all the statements and clauses thereof and in the language with which they are familiar. Mr. Thakkar, on instructions, states that both these petitioners read and write, so also understand English. As far as Murad is concerned, he is present in Court. The terms have been duly interpreted and explained to him with all their legal implications and consequences. Equally, Sravanya has signed these terms after her advocate met her personally and in the presence of another independent person, the terms were explained with all legal implications and consequences. After duly understanding and appreciating them, Sravanya has signed these terms. She could not remain present in Court, but Murad Anwar Jetha is present in Court. He states that the terms are acceptable to him. Both parties have thus no objection to their undertakings being taken on record and their

petitions disposed of in terms thereof.

12 After having perused these undertakings and satisfying ourselves that they are voluntarily given and handed in so also in the peculiar facts and circumstances of this case, we direct that both petitions shall be disposed of in terms of these undertakings. Each of the statements in these written undertakings are accepted as statements made to the Court. In addition to the consequences flowing from the Contempt of Courts Act, 1971, being invoked, in default, both these petitioners shall be evicted from the premises after 15th December, 2016, in the event of their failure to hand over possession to the first respondent and for such dispossession and eviction it will be open for the respondent No.1 to seek assistance from the local Police Station. The local Police Station shall extend all cooperation and assistance on such request being made by the first respondent.

13 As far as these petitioners are concerned, they accept all the steps and measures, including the applicability of the SARFAESI Act. They do not contest any of the proceedings and

measures under this Act. They also withdraw their suits in the Court of Small Causes, unconditionally.

14 The writ petitions, therefore, stand disposed of in terms of these undertakings.

15 There are also undertakings handed over at this stage by the borrower and the landlord. They are two Private Limited Companies. As far as the writ petition of Murad Anwar Jetha is concerned, the borrower is M/s. Meka Dredging Company Private Limited. The signatory to these terms is a Director of this company. He is duly authorised to represent the company and sign any affidavits and undertakings on its behalf. He is present in Court. He states that the term loan facility was sanctioned. The statutory notice under section 13(2) of the SARFAESI Act was issued to the borrowers and the guarantors to the facility. For the purposes of the loan, the borrower furnished a security so as to secure it in the form of the row-houses and that is more particularly described in paragraph 4 of this affidavit-cum-undertaking. The term loan was thereafter transferred and assigned by Dena Bank to

respondent No.1. In the light of the measures under section 13(4) the application under section 14 was filed and the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, has passed the impugned order in this writ petitions.

16 The borrowers after understanding all the legal implications voluntarily give up all the claims as far as the steps and measures taken by the then Dena Bank and the first respondent before us under the SARFAESI Act. They would not contest nor object to any of these measures. They have not filed any proceedings nor they intend to file any such proceedings. They have no objection to the physical possession of the property being handed over on or before 15th December, 2016, voluntarily by the persons in possession thereof or thereafter by the bank in accordance with law.

17 Thereafter if the bank takes recourse to such steps as are permissible in law, they would not contest nor object to the assignment in favour of the respondent No.1.

18 It is in these circumstances that we foreclose all the remedies of this borrower and landlord in both the petitions. We have clarified that the borrower despite such undertakings and affidavits can dispute the quantum and the amount claimed by respondent No.1 in the proceedings under the RDDB Act, 1993. This order shall be read in continuation of the order passed by this Court on 1st September, 2016.

19 All the petitions, accordingly, stand disposed of.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***