IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11117 OF 2015

Ramkripal Raghupati Singh ... Petitioner

Vs

1. Union of India & Ors. ... Respondents

Mr. Ramkripal Raghupati Singh - the Petitioner present in person.

Mr. Mohamadali M. Chunawala i/b Mr. P.S. Gujar for the Respondent No.1 – Union of India .

Mr. Prathamesh Kamat with Mr. T.N. Tripathi, Ms. Sapna Raichure i/b T.N. Tripathi & Co. for Respondent No.2, 3 and 12.

Mr. Sushant Prabhune for the Resp9onent Nos.8 & 9.

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

TUESDAY, 6TH SEPTEMBER, 2016

P.C. :

1 This writ petition under Article 226 of the Constitution of India discloses certain sorry state of affairs and which have been noted in the earlier orders.

2 The petitioner approached this Court in its writ jurisdiction seeking a direction to the Central Bank of India – respondent No.12, respondent Nos.2 and 3 as also respondent Nos.6 and 7, to obtain physical possession of the property and which the petitioner claims has been duly sold to him.

3 The petitioner is a senior citizen. He is a pensioner. He retired from service of the Central Bank of India on 31st December, 2011. It is the case of the petitioner that the respondent Nos.8 and 9 obtained a housing loan from the Central Bank of India on 26th July, 2003, for purchasing two flats each admeasuring 550 square feet built up area and situate at Navi Mumbai, District Thane. The details of these premises are set out in paragraphs 1 and 12 of the petition. Since these respondents defaulted in payment of the loan, their account was declared as a non-performing asset. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act, 2002") was invoked by the respondent No.12-bank. It sent a notice under section 13(2) of that Act calling upon the respondent Nos.8 and 9 to show cause why further

measures under that Act should not be taken as their account had fallen in arrears and is a non-performing asset. It called upon these respondents to repay the sum of Rs.10,67,007/- within sixty days. Since that payment was not received, the respondent Nos.8 and 9 were called upon to surrender physical possession of the premises. It is the case of the petitioner that physical possession of the premises was taken by the bank and a panchanama was drawn. Thereafter, a notice styled as auction / sale notice was published. The auction was scheduled on the date and time particularly set out in paragraph 14 of the petition. The petitioner's bid being highest, it came to be accepted. The petitioner paid the initial amount and thereafter the balance sum within the time stipulated in the terms and conditions of sale. The petitioner states that he also obtained a housing loan and that is how he arranged for the funds. The petitioner was thus to be put in possession of the premises by the respondent No.12 bank, but when it was taking the necessary steps, it found that the seal and lock placed on the premises were broken upon by respondent Nos.8 and 9. They were removed and these respondents re-entered the premises. That is how a complaint with the local Police Station was lodged.

4 In the meanwhile, the respondent Nos.8 and 9 continued in the premises. The Collector and District Magistrate, Thane, passed an order, copy of which is Annexure-H dated 3rd September, 2011, and called upon these respondents to hand over possession of the premises and in case there is non-compliance, the Tehsildar, Thane, to take forcible possession thereof and hand over the same to respondent No.12.

5 Thereafter, steps were taken to obtain physical possession of the premises and later on it has been found that somebody else has been inducted in the premises by the respondent Nos.8 and 9. They have not responded to the order of the District Magistrate nor has the property been handed over to the Tehsildar when he sought to implement and enforce the directions of the District Magistrate.

6 The respondent Nos.8 and 9 also filed an Application No.134 of 2012 in the Debts Recovery Tribunal – III under section 17 of the SARFAESI Act. It is stated by the petitioner in

the writ petition that a miscellaneous application therein was rejected.

7 Thereafter, another letter was written to the bank by the petitioner for handing over of possession of the flat No.7 which was in possession of the respondent No.12 so that he can occupy and have control of the flat No.8, but the respondent No.12 refused to comply with this request and stated that possession of both the flats would be handed over simultaneously. The result was that the lock and seal of that flat had also been removed by respondent Nos.8 and 9 at a later stage and the bank lost possession of that flat also. It is in these circumstances that the petitioner made a complaint on 26th December, 2014. There was no response to this and the petitioner was, therefore, constrained to address another letter dated 17th July, 2015. The petitioner approached the concerned Police officials. The petitioner also addressed some legal notices to respondent Nos.8 and 9.

8 The petitioner has pointed out in the writ petition that though attempts were made to obtain the physical possession

by the bank, the result is that though successful in the auction, a sale certificate having been issued, the ownership rights conferred, the petitioner is deprived of the physical possession.

9 It is on such a petition that this Court and taking due notice of the conduct of the bank, passed an order on 6th May, 2016. The Court called upon the bank to clarify as to when will it obtain the physical possession of the premises and hand over the same to the petitioner. Thereafter, on 7th July, 2016, the Central Bank of India agreed to file an affidavit and place on record the reasons for it not being able to place the successful bidder / auction purchaser in possession of the auctioned premises. The bank was called upon to respond by 21st July, 2016. On 21st July, 2016, an affidavit was tendered and on which several queries were raised but eventually the bank made a statement through the senior counsel that it would make a fresh application under section 14(1) of the SARAESI Act, 2002, and request the District Magistrate to pass an order thereon. The matter was, therefore, adjourned to 1st September, 2016, for the bank to report compliance.

10 Thereafter, the senior Manager of respondent No.12 filed an affidavit stating therein that an application was made on 13th July, 2016, prior to this Court's order, invoking the Collector and District Magistrate's jurisdiction under section 14(1). Thereafter, the bank complied with the directions and placed the necessary affidavit and relevant documents to enable the District Magistrate to pass an order. On repeated requests to him to expedite the matter, eventually an order dated 29th August, 2016, has been passed by the Collector and District Magistrate. A copy of that order is annexed as Exhibit-4 page 8 of this affidavit of the bank.

11 The Collector and District Magistrate opined that there was already an order passed under section 14(1) of the SARFAESI Act earlier. In the light of the writ petition before this Court and this Court's *prima facie* observations, the Collector and District Magistrate directed that the order passed earlier be enforced and a report of compliance be made and placed before the District Magistrate.

12 It is in these circumstances that the writ petition has been placed before us.

13 In the meanwhile, an appearance has been entered on behalf of the respondent Nos.8 and 9 and Mr. Prabhune appeared on their behalf. He tenders an affidavit-in-reply. It is contended by him that the facts as set out in the petition are not correct and accurate. The respondent Nos.8 and 9 deny them. The respondent Nos.8 and 9 state that they had approached the bank for sanctioning a housing loan to the extent of Rs.12,50,000/-. That was sanctioned. A mortgage was created in respect of the two flats in favour of the bank. The title deeds were deposited with the bank with an intention to create a mortgage in their favour. These persons, namely, respondent Nos.8 and 9 have inducted certain third parties on leave and licence basis so as to enable them to generate funds and repay the loan. It is stated that the bank did not proceed to take any further steps against these occupants until 15th May, 2012. However, aggrieved and dissatisfied with the actions of the bank, a Securitisation / Original Application was filed.

Initially, there was an order of status quo passed in favour of the respondents. Exhibit-A to this affidavit is a copy of the Roznama of the said proceedings.

14 Thereafter, Securitisation Application No.134 of 2012 was dismissed. It was dismissed for default. A restoration application being Miscellaneous Application No.34 of 2014 was filed for seeking restoration of the securitisation application. The restoration application was also dismissed on 13th August, 2014. Now an appeal is filed.

15 The allegation is that the bank has demonstrated undue haste and it never obtained physical possession of the premises from these parties before effecting the so-called sale. Therefore, the sale is bad and all steps culminating in issuance of the sale certificate are also contrary to law. Reliance is placed upon the judgment of a Division Bench of this Court in the case of *Blue Coast Hotel Limited vs. IFCI Limited*.

16 After having heard parties and perusing these affidavits, we are of the clear opinion that at this stage we are not called

upon to rule on the maintainability of the proceedings and stated to be pending before the Debts Recovery Appellate Tribunal. We are also not called upon to express any final opinion on the arguments and particularly of the respondent Nos.8 and 9 that the bank could not have effected the sale of the premises without obtaining physical possession of the same and their actions are contrary to law. We do not think that we are required to go into the validity and legality of the sale and the proceedings themselves.

17 We have an uncontroverted position on record as against respondent No.12. It has admitted that it has conducted an auction sale of the premises. That was pursuant to a sale / auction notice duly published in daily Free Press Journal and another newspaper. Pursuant to that, the bid of the petitioner was received and it was declared to be the highest. Thereafter, the same was accepted and the sale was concluded in favour of the petitioner. The sale certificate was issued and which enabled the petitioner to obtain physical possession of the premises. The bank states that it tried its best to assist him but every time its attempt to obtain the physical possession of the

flats / premises mortgaged to it and sold by it were foiled by respondent Nos.8 and 9. The seal and lock were broken upon and they re-entered the premises.

18 That is why the bank admits that it was required to approach the Collector and District Magistrate and it did approach that authority. An order was passed on 3rd September, 2011. It is common ground that as far as the bank is concerned, it states that this order was passed and that was not challenged by the borrower and guarantor. The sale price was received and in full. The bank, therefore, considers that it is obliged to hand over physical possession of the flats to the petitioner. He is entitled to obtain vacant and peaceful possession of the premises and enjoy the property. It is in these circumstances that the bank committed on oath before this Court as noted in the earlier orders that it would do its best and retrieve the premises so as to hand over the same eventually to the petitioner.

19 We are satisfied that belatedly some attempts have been made by the bank. We direct that in terms of the affidavit filed

by the bank and the order passed by the Collector and District Magistrate, the Tehsildar, District Thane, and the concerned Police Station, namely, Sanpada Police Station and the senior Inspector of that Police Station should render police assistance to the respondent No.12-bank and take possession of the premises from the respondent Nos.8 and 9. This order and direction can safely be issued in the light of the uncontroverted factual position emerging from the affidavit of the bank.

20 At the same time, we take due note of the pendency of the proceedings at the instance of the respondent Nos.8 and 9 before the Debts Recovery Appellate Tribunal. It is conceded by Mr. Prabhune that the order of status quo passed by the Debts Recovery Tribunal-III, Mumbai has since been vacated on the dismissal of the proceedings for want of prosecution and the dismissal of the restoration application as well. There is no impediment, therefore, in the bank to proceed and as directed above.

21 We also take note of the request made by the respondent Nos.8 and 9 through Mr. Prabhune that they be granted ten

days' time to had over the premises on their own and voluntarily to the respondent No.12-bank. In the light of the request made by Mr. Prabhune and since we had clarified to him that our order and direction will not disable the respondent Nos.8 and 9 from pursuing their legal remedies, we direct that the respondent Nos.8 and 9 can continue in the premises and which are subject matter of this petition for a period of ten days from today. It is stated that the respondent Nos.8 and 9 are not in physical possession of the premises and they have inducted licensees therein. These licensees are in possession of the premises pursuant to a leave and licence agreement and they have no independent right, title and interest therein. They would not be able to resist the respondent Nos.8 and 9 and also respondent No.12 in taking physical possession of the premises. It would be the duty entirely of respondent Nos.8 and 9 and their obligation to evict the licensees. They would ensure that the premises in vacant condition are handed over to the respondent No.12-bank on the expiry of the period of ten days. Apart from these licensees, who are respondent Nos.10 and 11 to the petition, none others are in possession thereof. We direct that if the possession is not taken from these persons and duly handed over by the respondent Nos.8 and 9 pursuant to the above undertakings to this Court within a period of ten days, it would be open to the Sanpada Police Station and the Tehsildar, Thane, to take forcible possession of the premises from whosoever is in possession and occupation and hand them over to the respondent No.12-bank. The respondent No.12-bank then, within a period of seven days thereafter, shall hand over the vacant possession of the premises to the petitioner. It would be open for the Tehsildar as also the Sanpada Police Station to break open the premises by removing any lock and seal thereon.

22 We clarify that this order is passed without prejudice to the rights and contentions of respondent Nos.8 and 9 in the pending proceedings. The Debts Recovery Appellate Tribunal shall deal with their contentions in the pending proceedings strictly on their own merits and in accordance with law. All contentions of the bank in those proceedings are also kept open. The writ petition is, accordingly, disposed of.

23 We would be justified and going by the conduct of the bank till date, in imposing heavy costs on respondent No.12. However, Mr. Kamat submits that the bank has learnt its lesson and it will not repeat this conduct in future. It will not allow its security interests to be frittered away or waived in the manner noticed in the present petition. The bank will take due care and precaution and hereafter there will be no complaint as far as the respondent No.12-bank that it has failed in its duty to abide by law. It is only in the light of these assurances of Mr. Kamat that we do not impose any costs.

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