IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 944 OF 2016

M/s. Kamla Aims Housing and Construction Pvt. Ltd.	}	**Petitioner**
versus		
State Bank of India and Ors.	}	**Respondents**

Mr. Girish Godbole with Mr. Prashant J. Pandit and Mr. Raj Patel for the petitioner.

Mr. Kunal Bhanage and Mr. Chetan Mhatre i/b. M/s. Utangale and Co. for respondent no. 1.

CORAM :- S. C. DHARMADHIKARI & G. S. KULKARNI, JJ.

DATED :- APRIL 1, 2016

P.C. :-

1) Having heard Mr. Godbole appearing for the petitioner and the advocate appearing for respondent no. 1 bank, who appears on private notice, we are of the view that the writ petition need not be kept pending.

2) The petitioner has moved this court because the Debt Recovery Tribunal has rejected an interim application on 31st March, 2016 and the first respondent bank is proceeding to act in terms of an order under section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002. It may take possession of the immovable property and dispose it of.

3) Mr. Godbole learned advocate appearing for the petitioner submits that the petitioner/original applicant would not deal with the property in its possession and which is being developed by it. There is a construction activity going on, but the petitioner would stop the same as also it would make sincere and genuine attempts to arrive at an amicable settlement with respondent no. 1 bank. The petitioner has not disputed the transaction as between the principal borrower and the bank. The principal borrower has executed a Memorandum of Understanding with the petitioner, but with a knowledge of the mortgage in favour of the bank. That Memorandum of Understanding has not been registered though full stamp duty has been paid. A sum of Rs.14.56 crores is paid under these Memorandum of Understanding to the principal borrower. In the circumstances that the petitioner would like to approach the bank and make an offer. For all such steps to be taken, this court should protect the petitioner and restrain the bank from going ahead and taking possession of the property.

4) The learned advocate appearing for the bank, on the other hand, says that the bank does not recognise the petitioner

for it is neither principal borrower nor guarantor. It may have dealt with a mortgaged property, but knowing the rights of the bank and with full knowledge thereof it has proceeded to carry out construction activity on site. The principal borrower has not cleared the dues of the bank but created such third party rights and that is why the bank be allowed to take possession of the property. On instructions, the counsel states that the bank will only take physical possession and not go ahead and sell the property for a period of four weeks from the date of receipt of a copy of this order. Within this period, the bank will not sell the property. During this period, the petitioner is free to approach the bank and for an amicable settlement.

5) After hearing both sides and perusing the interim order passed by the Tribunal, but finding that the petitioner cannot approach an appellate authority in the absence of a Chairperson appointed on the Debt Recovery Appellate Tribunal, we direct that the bank can take physical possession of the property and that would mean affixing a board of the bank on the conspicuous part of the property, however, the bank shall not proceed to sell the property as undertaken before us for a period of two months from today. In the meanwhile, the petitioner is also restrained from creating any third party rights or disposing

of the property in any manner whatsoever. It shall also not transfer any rights of development or otherwise entering into any arrangement, which shall frustrate the bank taking steps in accordance with the securitisation measures. Within this period, the petitioner can approach the bank. We also direct the learned presiding officer to dispose of Securitisation Application No. 132 of 2016 within a period of two months from the date of receipt of a copy of this order. The learned presiding officer shall dispose of the matter uninfluenced by any tentative or *prima facie* observations in the impugned order.

6) The writ petition is disposed of in the above terms.

(G.S.KULKARNI, J.) (S.C.DHARMADHIKARI, J.)