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

WRIT PETITION (LODGING) NO.1375 OF 2016

Rochak D. Ahuja …. Petitioner
V/s.
The State of Maharashtra & Ors. …. Respondents

Mr. Ghanshyam Upadhyay, i/by M/s. Law Juris, for the Petitioner.

Ms. Vinaya J. Chavan for Respondent No.3.

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

DATE : 7TH JUNE, 2016.

P.C. :

1. This Writ Petition has been moved urgently only because of an apprehension of dispossession today by 3 pm.

2. The argument of Mr. Upadhyay, learned counsel appearing for the Petitioner, is that the Petitioner desires to prefer an Appeal against the order passed by the Debts Recovery Tribunal-III, Mumbai, on 15th April 2016 in Securitization Application No.393 of 2015.

3. The apprehension is that, though this order is appealable but the Appellate Forum is not available at Mumbai, then, the order of the learned Chief Metropolitan Magistrate, Mumbai, dated 11th June 2015 would operate by its own force, enabling Respondent No.3-Bank to take physical

possession of the immovable property. Thereafter the right to prefer further Appeal to the Debt Recovery Appellate Tribunal would be defeated and frustrated completely.

4. On the other hand, the counsel appearing for Respondent No.3-Corporation Bank submits that these are delaying tactics. Not a farthing has been paid though the notice under Section 13(2) has been issued, the measures under Section 13(4) have been taken and the Securitization Application has been dismissed. Now the dues of Respondent No.3-Bank have mounted to the extent of Rs.1,20,00,000/- approximately *[Rupees One Crore Twenty Lacs]*. Therefore, Respondent No.3-Bank should be allowed to take physical possession of the immovable property.

5. We have noticed that in terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, *(for short, "SARFAESI Act")*, against an order passed by the Debts Recovery Tribunal in Appeal, under Section 17, there is a further Appeal to the Appellate Tribunal provided by Section 18. That Appeal has to be preferred within a period of 30 days from the date of receipt of the order of the Debts Recovery Tribunal.

6. Presently, the Petitioner has not filed any such Appeal. However, on instructions, Mr. Upadhyay states that within a period of 15 days from today, such an Appeal would be preferred to the Debts Recovery Appellate Tribunal. He would submit that to enable the Petitioner to prefer such an Appeal and apply for an interim order therein, the Petitioner's possession of the property in question should be protected. Meaning thereby, he should not be dispossessed, as apprehended.

7. Mr. Upadhyay also states that the Petitioner would endeavour to clear off the entire dues of Respondent No.3-Bank and would make an attempt to bring sizable sum, so as to secure and protect the interest of the Bank also.

8. It is then stated by Mr. Upadhyay that though the Petitioner could have approached the Debts Recovery Appellate Tribunal, but, presently, there is no Chair-Person appointed on the Debts Recovery Appellate Tribunal, Mumbai and there is no likelihood of the Chair-Person being appointed in near future. The learned Chair-person from the Debts Recovery Appellate Tribunal of Allahabad cannot be approached by the Petitioner easily, nor does he become available for the parties like the Petitioner in Mumbai for he is presently holding the charge of Debts Recovery Appellate Tribunal, Mumbai and Delhi as well.

9. Once it is the prerogative of the Debts Recovery Appellate Tribunal to condone the delay in filing the Appeal, all that we do is to permit the Petitioner to prefer such an Appeal and file it within 15 days from today. If the said Appeal is filed within 15 days from today, then, the Debts Recovery Appellate Tribunal may consider condoning the delay in filing of the Appeal in exercise of such powers as are conferred upon it by law.

10. If the Appeal is preferred, as above, and application for condonation of delay is also made, so also if the Petitioner desires some ad-interim protection from the Tribunal, then, for enabling the Petitioner to do all this, we direct that for a period of eight weeks from today, the possession of the immovable property should not be taken. However, there cannot be a unconditional protection given the conduct of the Petitioner.

11. In the circumstances, on the undertaking of the Petitioner, who is present in Court through his counsel, that an Appeal would be preferred, so also within a period of 30 days from today, a sum of Rs.30,00,000/- would be paid to Respondent No.3-Bank and a further sum of Rs.30,00,000/- would be paid within four weeks / 30 days thereafter, that we direct, for a period of eight weeks from today, the physical possession of the premises shall not be taken by Respondent No.3-Bank.

12. However, if there is a default in complying with the statement of deposit of Rs.30,00,000/- within four weeks, then, our protection shall come to an end immediately. The Petitioners then cannot retain possession of the premises and Respondent No.3-Bank will be free to take the same in accordance with law.

13. In the event, the first installment of Rs.30,00,000/- is deposited, our order shall enure for the benefit of the Petitioner for a period of eight weeks from today.

14. This order is passed because it is stated that the Petitioner, who is present in Court, is in possession of the flat / immovable property described in the Writ Petition, particularly in the cause title, and no third party rights are created, nor any third party is put in possession thereof.

15. This order is passed in the presence of one Shri. Deepak D.Ahuja. who is a Power of Attorney holder and father of Shri. Rochak D. Ahuja. It is stated that the father and son are residing in the premises and apart from them, none other is occupying the same.

16. The Writ Petition is disposed of on the ground that the Petitioner has alternate efficacious remedy. Needless to clarify that we have not expressed any opinion on the merits of the controvery.

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