

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

WRIT PETITION (LODGING) NO.1621 OF 2016

Singhania Fabexports Pvt. Ltd.,
Andheri (East), Mumbai & Ors.

.... Petitioners

V/s.

State Bank of India,
Andheri (E), Mumbai & Anr.

.... Respondents

Mr. Mayur Khandeparkar, a/w. Mr. Prathamesh
Kamat and Mr. T.N. Tripathi, i/by M/s. T.N. Tripathi
& Co., for the Petitioners.

Mr. Vivek Sawant for Respondent No.1.

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

DATE : 16TH JUNE, 2016.

P.C. :

1. Mentioned. Not on Board.
2. The Petitioners approached this Court being dissatisfied with an order passed below Exhibit-1 in Miscellaneous Application No.60 of 2016.
3. That is an application which has been filed seeking amendment to the Securitization Application. The Securitization Application, under Section 17, has been filed by the Petitioners to challenge the notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (*for short "the SARFAESI Act"*).

4. Since a composite prayer seeking leave to amend and to grant interim protection / interim injunction against the sale of the property, after Respondent No.1-Bank takes physical possession, has been rejected and the learned Chairperson is not available for a week so as to approach the Debt Recovery Appellate Tribunal, that the present Petition is filed.

5. The apprehension of the Petitioners is that now the notice dated 27th May 2016 and the order passed under Section 14(1) of the SARFAESI Act would become enforceable, the Petitioners would be dispossessed from a residential bungalow, more particularly described in the notice annexed at page 67 of the paper-book.

6. It is in these circumstances that the present Petition has been filed. The dues payable to Respondent No.1-Bank, according to learned advocate appearing for Respondent No.1-Bank and in terms of the interim order of the Tribunal, are Rs.31,79,17,855/-. The Demand Notice is dated 19th December 2013. The advocate for Respondent No.1-Bank submits that nothing has been paid from that day till today. Therefore, this Writ Petition be dismissed.

7. During the course of arguments, when we were not inclined to grant unconditional protection to the Petitioners, Mr. Khandeparkar appearing for them stated that Petitioner No.4 is a lady and a cancer patient. She is residing in the said residential premises. The formal possession of the premises is already with Respondent No.1-Bank.

8. It is stated that an offer has been made to Respondent No.1-Bank that within 30 days from today, the Petitioners will make an attempt to sell

the bungalow. The bungalow would be sold at a price not lesser than Rs.12,31,00,000/-. The entire sale proceeds would be handed over to Respondent No.1-Bank.

9. In the event the bungalow could not be sold, physical possession thereof would be handed over to Respondent No.1-Bank. Thereafter, every action that Respondent No.1-Bank takes, including sale of the premises, shall not be questioned by the Petitioners and their Securitization Application (Lodging) No.45 of 2016 to then stand automatically dismissed.

10. Such an undertaking is given by the owner of the bungalow, namely, Petitioner No.4. Mr. Khandeparkar, on instructions, stated that this undertaking will bind Petitioner Nos.1 to 3 as well. They are conceding that Petitioner No.4 alone can deal with the premises and they have no independent right, title and interest therein. It is on such footing and the written undertaking being handed over to us, which we take on record, that we direct that, for a period of four weeks from today, the physical possession of the Petitioners in respect of this premises shall not be disturbed. However, Respondent No.1-Bank will continue to hold symbolic possession of the same. Similarly, the Petitioners shall not alienate, encumber or part with possession of the premises or transfer the premises in any manner until the possession thereof is to be handed over to either the purchaser, with whom the Petitioners' finalize the sale and agree to sell the premises and in which sale, Respondent No.1-Bank has to concur, or, till they hand over vacant and peaceful possession of the premises after 30 days to Respondent No.1-Bank, in the event the Petitioners are unable to sell the premises on their own.

11. Each and every statement made in this affidavit, which is tendered today, is accepted as an undertaking given to this Court. Needless to clarify, that, in default of compliance, not only would all legal proceedings instituted by the Petitioners come to an end, but they would also have to face such action, as is permissible in law, for breach of the undertaking given to this Court.

12. We have no doubt in our mind that if the Petitioners put up the bungalow for sale on their own and within 30 days for the price not below Rs.12,30,00,000/-, then, Respondent No.1-Bank will extend all co-operation. It would have no objection, if the sale is concluded by the Petitioners, to hand over the original Title Deeds to the purchaser of the property.

13. Writ Petition is disposed of in the above terms.

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