

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

WRIT PETITION (L) NO. 2123 OF 2016

Teresa Anthony Koonan	}	Petitioner
versus		
Abhyudaya Co-operative	}	
Bank Ltd. and Ors.	}	Respondents

Mr. Mathews Nedumpara i/b. Ms. Rohini
M. Amin for the petitioner.

Ms. Merlyn Monterio for respondent no.1.

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

DATED :- August 3, 2016

P.C. :-

1) At our request, apart from the bank and the Collector and District Magistrate, Raigad, Alibaug, all other respondents stand deleted from the array of parties.

2) After hearing both sides, we do not think that at the stage at which the matter is brought before us, we should entertain the writ petition.

3) On the own saying of the petitioner, an application has been made by her before the DRT-II, Mumbai being Securitisation Application (L) No. 663 of 2016.

4) The apprehension is that on account of a resolution passed by the presiding officers of the DRT, Mumbai, the petitioner's advocate engaged before the said tribunal has been debarred from appearing before these presiding officers. Taking advantage of that, the bank, which has issued the notice under section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Financial Securities Act, 2002 (SARFAESI Act), after issuance of the notice and pursuant to the order passed by the Collector and District Magistrate, Raigad, Alibaug under section 14(1) of the SARFAESI Act, would dispossess the petitioner from the possession of the immovable properties, more particularly described in para 10 at pages 6 and 7 of the paper book.

5) In the past, the petitioner states that the Chairperson of the tribunal was directed to transfer such proceedings where Ms. Rohini Amin was engaged by the parties as an advocate, to the DRT, Pune.

6) We direct accordingly. The securitisation application filed by the petitioner shall be transferred to the DRT, Pune. Since the petitioner apprehends that the possession would be taken today at 1.00 p.m., we direct that to enable the petitioner to appear before the DRT, Pune and to seek ad-interim protection,

let the bank not take physical possession of the immovable properties for a period of 15 days from today.

7) This protection will come to an end after 15 days and within this period, the petitioner must take application before the tribunal to seek ad-interim relief/protection. Let the registry of the DRT, Mumbai forthwith transmit all the records to the DRT, Pune so that the petitioner can make that application.

8) We clarify that we have not expressed any opinion on the merits of the controversy and on the contention of the petitioner that she is in physical possession of the properties. All pleas of both sides in that behalf are kept open.

9) We clarify that merely because we have protected the petitioner, the presiding officer of the DRT, Pune is not obliged to continue that protection. He shall decide the issue strictly on merits and in accordance with law uninfluenced by our order and directions.

10) With the aforesaid directions, the writ petition is disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)