

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

WRIT PETITION (LODGING) NO.2141 OF 2016

Ramnik Ravjibhai Nathwani Petitioner
V/s.

Bank of Maharashtra, Navi Mumbai & Ors. Respondents

Mr. S.M. Gorwadkar, Senior Counsel, a/w. Mr. S.H. Gangal, Mr. Ravi Shinde and Mr. M. Singh, i/by M/s. Leon Samuel, for the Petitioner.

Mr. O.A. Das for Respondent No.1.

Ms. Uma Palsuledesai, A.G.P., for Respondent No.7-State.

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

DATE : 4TH AUGUST, 2016.

P.C. :

1. Mentioned. Not on Board.
2. Having heard both sides, we find that this Writ Petition cannot be entertained.
3. The Petitioner has an alternate and equally efficacious remedy of appeal to challenge the order dated 3rd August 2016 passed by the Presiding Officer, Debt Recovery Tribunal-III, Mumbai below Exhibit-1 in Securitization Application No.229 of 2016.

4. Mr. Gorwardkar, learned senior counsel appearing on behalf of the Petitioner would submit that the first Respondent-Bank is likely to take physical possession of the immovable properties of which the Court Receiver, High Court, Bombay stands appointed as Receiver. This is impermissible and without prior leave of the Court appointing the Receiver.

5. He places reliance upon the two Judgments of the Hon'ble Supreme Court of India in *Kanhaiyalal Vs. Dr. D.R. Banaji and Ors.*, AIR 1958 SC 725 and *Everest Coal Company Pvt. Ltd. Vs. State of Bihar and Ors.*, AIR 1977 SC 2304.

6. Having perused the entire Petition and all the annexures thereto, we do not think that the Petitioner is remediless. Secondly, all the issues and particularly, whether the first Respondent-Bank is obliged to take possession only after seeking leave of the Court and whether such leave, which can even be subsequently obtained, is required in the scheme of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, are all issues and matters which the Petitioner can raise in the appellate proceedings.

7. Presently, the first Respondent-Bank is only taking physical possession and that by itself does not prejudice the Petitioner. By clarifying that the first Respondent-Bank's action will be without prejudice to the rights and contentions of the Petitioner to adopt appropriate proceedings and they shall not be affected merely because the first Respondent-Bank has stepped in, we dispose of this Writ Petition.

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