

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

WRIT PETITION (L) NO. 2196 OF 2016

M/s. Ramcharan Dairy and	}	
Cattle Farm and Anr.	}	Petitioners
versus		
Indian Overseas Bank	}	
and Ors.	}	Respondents

Mr. Mathews Nedumpara for the
petitioners.

Ms. Salma Ghaswala for respondent nos. 1
to 5.

Ms. Manisha Jagtap for respondent nos. 6
to 8.

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

DATED :- August 11, 2016

P.C. :-

1) This matter was placed before us because it is stated by the petitioners that the earlier writ petition filed by them, namely, Writ Petition (L) No. 1412 of 2016 was disposed of by this court on 15th June, 2016. On account of the petitioners engaging Ms. Rohini Amin, the proceedings were transferred from DRT, Mumbai to DRT, Pune.

2) However, the papers and records could not be transmitted to DRT, Pune. That is why on a written praecipe by the

applicants, ad-interim orders were sought before DRT, Pune. That have been denied on the ground that no securitisation application is filed or pending before DRT-III, Mumbai.

3) Curiously, if the presiding officer was of this opinion, he would have been definitely said so in the impugned order. He has not granted any ad-interim protection to the petitioners simply because there is no record and proceedings before the Pune Tribunal for passing any interim orders. Hence, he denied the request.

4) Pertinently, when this order is passed by the presiding officer on 13th July, 2016, as would be revealed by page 64 of the paper book, in SA No. 424 of 2015, we do not see how this number came to be assigned by the DRT, Pune, if no records or proceedings were before it. The petitioners have stated in para 7 of this writ petition that they instituted Miscellaneous Application No. 614 of 2016 before DRT-III, Mumbai on the premise that the auction did not fructify, hence, the cause of action did not survive is an error apparent on the face of the record. The petitioners have also stated that they or their counsel could not bring the matter before DRT-III and seek interim orders in the face of the forcible dispossession from their residential flat as well as the dairy farm in the purported execution of the order under section 14.

5) Writ Petition No. 2715 was filed. There as well, the petitioner had been protected and to the extent indicated by the order at Annexure 'G', in the case of another petitioner or a party similarly placed like the present petitioners, this court had protected the litigants. It has also been pointed out as to how the Chairperson of DRAT, Mumbai is unavailable, as the post of Chairperson of DRAT, Mumbai is vacant.

6) In the above circumstances and when the petitioner apprehended dispossession from the immovable properties that we granted request for production of papers, in the morning session.

7) The petitioner had also given notice and that is how the learned advocate for the contesting respondent, namely, Indian Overseas Bank appeared to oppose the petition. We orally directed Ms. Jagtap appearing for the Union of India to take instructions from the registry of DRT-III, Mumbai as to why papers and proceedings have still not been transmitted to DRT, Pune. The matter was kept back and with a request to the bank's advocate to defer the taking of possession.

8) We are informed that the possession has not been taken and the matter is deferred. We are also informed that on or about 25th July, 2016, the records and proceedings have been transmitted

and transferred to DRT, Pune. The order-sheet dated 13th July, 2016 may be recording that proceedings have not been transferred, but this is a subsequent development. We are also informed by Ms. Jagtap, after she received telephonic instructions, that the matter is before DRT, Pune Registry in connection with some procedural compliances.

9) If this indeed is the position, then, we need not keep the present petition pending. More so, when the petitioners and their advocate are both ready to approach DRT, Pune and seek ad-interim/interim reliefs. With a view to enable them to file an appropriate application supported by an affidavit claiming such reliefs, we defer the taking of the possession by the first respondent bank till 19th August, 2016, within which time, the petitioners must make the necessary application supported by the affidavit before the DRT, Pune. They must also give advance intimation to the bank before they make any request for grant of ad-interim/interim reliefs by DRT, Pune.

10) It is only to protect the petitioners against dispossession without they having any opportunity to make a request for grant of ad-interim/interim reliefs that this order is passed. It is passed in the peculiar facts and circumstances of this case and should not be treated as precedent for any future cases.

11) The writ petition is disposed of by not examining the rival contentions as far as the merits are concerned.

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