

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 576 of 2017
ALONG WITH
WRIT PETITION No. 577 of 2017

Makarand Rajadhyaksha & Anr ..Petitioners.
Vs
Union of India & Anr ..Respondents.

Mr. Uzair Ali i/by Mr. Yogendra M. Kanchan for the
Petitioners.

Mr. Mohamedali Chunawala a/with Ms. Nisha Valani for
Respondent No.1.

Ms. Vinaya Chavan i/by Vinaya Chavan & Co. for the
Respondent-Corporation Bank.

**CORAM : R.M. BORDE &
A.S.GADKARI, JJ.**

DATE : 17th JANUARY, 2017.

P.C.

1) The petitioners are borrowers in respect of the loan amount advanced to them by the respondent No.2 Bank. The petitioners are in arrears of an amount, approximately Rs.15 Crores. It is informed that there are two loan accounts being operated by the petitioners and the amount recoverable as per the contention of the Respondent No.2 Bank is as specified

above. The respondent Bank in order to enforce the recovery of the aforesaid amount issued notice to the petitioners under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (for short “the SARFAESI Act”).

2) After considering the reply of the petitioners, measures as contemplated under Section 13 (4) of the SARFAESI Act, have been taken and the respondent Bank with a view to enforce the recovery of the amount, upon issuance of a notice in that behalf, intends to enforce possession over the residential flat bearing No. C-1502, 15th Floor, Bellissimo Co-operative Housing Society Limited, CTS No. 1/63, 1/64 N.M. Joshi Marg, Lower Parel, (East), Mumbai. The another secured asset in respect of which the Respondent-Bank intends to enforce possession is stated to be Flat No.1102, 11th Floor, Dosti Orchid Co-operative Housing Society Limited, Dosti Acres, Wadala, (East) Mumbai. The petitioners state that they desired to approach the Debt Recovery Tribunal -II Mumbai by tendering a Securitisation Application No.421 of 2016. Since there was some delay in approaching the Tribunal, an application seeking condonation of delay was

presented. The application tendered by the petitioners seeking condonation of delay has been turned down by the Debt Recovery Tribunal, Mumbai (DRT). As such the petitioners intend to approach the Debt Recovery Appellate Tribunal, Mumbai (DRAT). The Respondent No.2 Bank, in the meantime, has issued a notice to the petitioners with a view to take possession of the secured assets, as such the petitioners have approached this Court.

3) The learned Counsel appearing for the Petitioners, on instructions, informs that his client is willing to hand over the possession of residential Flat No.1102, 11th Floor, Dosti Orchid Co-operative Housing Society Limited, Dosti Acres, Wadala (East) Mumbai. In view of the willingness expressed by the petitioners, to hand over the possession of one of the secured assets, we deem it proper to grant a limited protection in favour of the petitioners in respect of the recovery of possession of residential Flat No. C-1502 15th Floor, Bellissimo Co-operative Housing Society Limited, CTS No. 1/63, 1/64 N.M. Joshi Marg, Lower Parel, (East), Mumbai on a condition of handing over the possession of residential flat No.1102, 11th Floor, Dosti Orchid Co-operative Housing Society Limited,

Dosti Acres, Wadala (East) Mumbai. We, therefore, direct the Respondent No.2 Bank not to enforce the possession notice in respect of Flat No. C-1502, 15th Floor, Bellissimo Co-operative Housing Society Limited, Lower Parel (East) Mumbai for a period of 15 days from today with a view to facilitate the petitioners to approach the DRAT for redressal of their grievance in accordance with law.

4) It would be open for the petitioners to approach the DRAT, Mumbai and seek appropriate relief for protection of their interest. It is clarified that we have not gone into the claims raised by the petitioners as well as the contentions of the respondent No.2 Bank and it would be open for the DRAT to pass appropriate orders considering the merits of the claim of the petitioners and in accordance with the provisions of law.

5) In view of the order as above, both the writ petitions are disposed of.

(A.S. GADKARI,J)

(R.M. BORDE, J.)