

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 391 OF 2016

Sreelekha Sarda

... Petitioner

vs.

Axis Bank Ltd. and ors.

... Respondents

Mr. Prerak Choudhary i/by Navaneetha Krishnan T., Advocate
for the petitioner.

Mr. Sheelang Shah a/w Ms. Uma Fadia a/w Mr. Shashank N.
Fadia, Advocate for respondents no.1 & 2.

Ms. Anamika Malhotra, A.P.P. for the State/respondent no.9.

Coram : Smt. R. P. SondurBaldota, J.

Date : 17th January, 2017

P.C. :

1. The orders impugned in this petition arise out of Miscellaneous Application No.705 of 2015 filed by the petitioner in Securitisation Application No.35/SA/2013. By it's order dated 30th October, 2015, the trial Court dismissed the Miscellaneous application, which order has been confirmed by the Sessions Court on 14th December, 2015, by dismissing the revision application preferred against it.

2. The brief factual background of the petition is as follows :

Respondent no.1 had given financial assistance to respondent no.5 by way of credit facility to the extent of

Rs.20,00,00,000/-. Respondents no.5 to 8 and other accused had created equitable mortgage in respect of the three flats by depositing Title Deeds by way security towards repayment of the loan. On failure on the part of the borrower in repaying the loan, action under the SARFAESI Act had been taken by respondent no.1. It filed Case No.35/SA/2013 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). By the order dated 7th February, 2013 that application was allowed and Commissioner was appointed to take possession of the secured assets being three flats in a Co-operative Housing Society.

3. The petitioner is the married daughter of one Sham Sundar Tapuriah and Shantidevi Tapuriah, who were the original owners of the three flats. Shantidevi had executed a Power of Attorney in favour of her three sons, who had in turn executed a Power of Attorney in favour of their father Sham Sundar Tapuriah. The petitioner alleges that the equitable mortgage created by Sham Sundar Tapuriah on the basis of Power of Attorney is a bogus document and can have no sanctity of law because at the relevant time Shantidevi Tapuriah was no more. Consequently, the petitioner could not have been deprived of her rights in the property as the heir of her mother. Therefore more than three years after the application of respondent no.1 was allowed i.e. in the month of October, 2015, the petitioner herein filed Miscellaneous Application No.705 of 2015 titled as "Application under Section 145 of Code of Criminal Procedure

against illegal dispossession which will lead to law and order situation and under Section 340 of Code of Criminal Procedure for making false claim and perjury". In her application after raising several objections to the action taken by respondent no.1 under SARFAESI Act, the petitioner claimed that, "law and order situation" may arise at the time of taking of possession of the flats by the Bank because her rights of as a co-owner of the flat being an heir of her mother are affected.

4. A claim as above would amount to nothing but a threat on the part of the petitioner to create a law and order situation. As such it was an abuse of process of law. Mr. Chaudhary, the learned advocate for the petitioner however on instructions states that the proceedings as regards action under Section 145 Criminal Procedure Code have become infructuous because respondent no.1 has, since, taken possession of the three flats. He however submits that the complaint of the petitioner for action under Section 340 of Criminal Procedure Code deserves to be considered which according to him has not been considered by the Courts below. Perusal of the two impugned orders shows that the Sessions Court has considered the same and rejected it for the reasons stated in the order.

5. In her application the petitioner had claimed several reliefs as regards the mortgage of the property. By prayer clauses (a) to (d) she sought declarations in following terms :

- (a) that the order dated 7th February, 2013 is null and void.
- (b) that the mortgage of share of Shantidevi in the flats

- in question is not tenable in the eyes of law and the share of the heirs of Shantidevi can not be disturbed without following due process of law.
- (c) that the petitioner is entitled to the flats in question.
 - (d) that the order dated 7th February, 2013 is expired and hence become inexecutable.

The next three prayers i.e. prayers (e) to (g) are the interim prayers and by prayer clause (h) she sought to “punish the Accused No.2 in accordance with law.” Accused no.2 is the authorised officer of respondent no.1 Bank. Thus there was no prayer relating to action under Sections 340 of Criminal Procedure Code. As regards the contents of the application, perusal of the same shows that there has no specific allegations made therein relating to the proceedings under Section 340 of Criminal Procedure Code. The petitioner at para 14 state that there is no legal sanctity in the claim made by respondent no.1 that petitioner's mother had created mortgage / guarantee as on the date of the purported mortgage / guarantee. The mother was no more. It is next contended that the Power of Attorney executed by the mother in favour of her sons was unregistered and insufficiently stamped. As such it has no legal sanctity in view of Section 17 of the Registration Act and Section 52(b) of the Bombay Stamp Act. At para 15, it is alleged that respondent no.1 Bank has got through with Section 14 order from the Court of learned Magistrate “by throwing dust in the eyes of the Court”. In the further paragraphs similar vague allegations are seen to have been made.

6. The Sessions Court has discussed the contention of the petitioner raised under Section 340 of Criminal Procedure Code. at para 21 of it's order. It has on perusal of the application opined that there are no allegations in the complaint for the learned Chief Metropolitan Magistrate to invoke power under Section 340 of Criminal Procedure Code. As already seen above the contents of the application filed by the petitioner confirms this opinion of the Sessions Court. Therefore there is no infirmity whatsoever in the orders passed by the Courts below. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]