

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1692 OF 2016

Mrs.,Rashmi Ritesh Wadhan. ..Petitioner.

vs.

State of Maharashtra and ors. ..Respondents.

Mr. S.S.Kanetkar for the Petitioner.

Mr. A. S. Khandeparkar with Mr. Rakesh Pathak i/by
Khandeparkar and Associates for Respondent No.3.

Ms. Meena Thakkar i/by Vinod Naik for Respondent No.4

CORAM : R.M. BORDE AND

A.S. GADKARI, JJ.

DATE : 10th March,2017

PC:

1) The petitioner is legally wedded wife of respondent No.4. The marriage between the petitioner and the respondent was solemnized in 1999. There are two children born to the couple out of the wedlock. The petitioner is residing along with her children in Flat No.205, 2nd floor, Sripal Co-op. Housing Society, C Wing, Shukrawar Peth, Pune. It is not a matter of dispute that the relations between the husband and the wife are not cordial and they are residing separately. The petitioner herein tendered an application to the J.M.F.C. making complaint against the respondent husband in respect of domestic violence. The learned J.M.F.C. by an order dated 7.3.2011 restrained the respondent husband from selling or creating third party interest

in the flat till the decision of the case. The petitioner herein is permitted to reside in the flat. The flat where the petitioner is residing is already mortgaged. The interim order passed by the Magistrate on 7.3.2011 has been confirmed on 1.10.2015.

2) The respondent has mortgaged the flat which is in occupation of the petitioner with respondent No.3-bank and has borrowed certain amount. Since respondent No.4 has failed to repay the amount recoverable by respondent No.3-bank, proceeding in respect of recovery has been initiated by the bank under the provisions of SARFAESI Act. The petitioner herein apprehends her dispossession at the hands of respondent No.3-bank and as such, approached this court.

3) Respondent No.4 has presented an undertaking to this court assuring to deposit an amount of Rs.6,50,000/- within a period of 15 days from today. The total amount recoverable by the bank from respondent No.4 as of today is to the tune of Rs.13,01,788.00. Respondent No.4 has undertaken to deposit the balance amount as directed by this court. We allow respondent No.4 to deposit the balance amount excluding the amount which respondent No.4 is required to deposit within 15 days from today within further extended period of one month from the date of deposit of the first instalment of

Rs.6,50,000/-.Thus, respondent No.4 shall have one and half months period available for clearing the entire dues recoverable by respondent No.3-bank. In the event of failure of respondent No.4 to deposit Rs.6,50,000/- within 15 days from today as undertaken or further balance amount within one month from the date of deposit of the first instalment, right will accrue to the petitioner to clear all the loan outstanding against respondent No.4 and claim the property i.e. Flat No.205 situated at Shukrawar Peth, Pune. In such eventuality, respondent No.3 shall transfer the property in favour of the petitioner subject to condition of deposit of total amount recoverable by the bank. It would be open for petitioner to deposit the amount within three months from the date of accrual of her right. The petitioner shall be permitted to reside in the flat in her occupation until respondent No.4 clears all the dues. It would also be open for the petitioner to file appropriate application as and when cause of action accrues for exercising her right of residence as against respondent No.4. It is clarified that no further extension shall be granted in favour of respondent No.4 in respect of deposit of amount as directed above on any count. The petitioner herein undertake not to part with the possession and in the event of respondent No.4

depositing the total amount recoverable by the bank, to vacate the possession and handover the same in favour of the bank. In the eventuality of transfer of flat in favour of the petitioner, concerned society shall not raise any objection.

4) In view of the above, writ petition is disposed off.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)