IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3628 OF 2017

Rameshwar Ramchandra Nirmal ... Petitioner
versus
Bharat Co-op. Bank (Mumbai) and another ... Respondents

Mr.I.S.Thakur i/by Global Juris Consults for Petitioner.
Mr.Prashant Naik i/by Mr.Sandeep R. Waghmare for Respondent no.1.

CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.

DATE : 29th March 2017

PC :

1. We have heard Mr.Thakur for Petitioner. We have with his assistance perused the writ petition and all the annexures thereto.

2. The writ petition impugns an interim order dated 19th January 2017 passed by learned Chief Metropolitan Magistrate, Esplanade, Mumbai, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (`the Act of 2002'). That is in relation to a flat more particularly described in prayer clause (a) of the petition.

3. Mr.Thakur appearing in support of this petition submits that the writ petition is confined and restricted to the relief sought in terms of prayer clause (a). The Petitioner is not impugning any order of the Presiding Officer of Debts Recovery Tribunal (`DRT')

and he would work out his remedies as far as that order is concerned. The Petitioner is aggrieved by order dated 19th January 2017 of the learned Chief Metropolitan Magistrate (`CMM') on the ground that the learned CMM has failed to discharge his statutory duty of ascertaining whether the bank has filed an affidavit setting out true and correct particulars. The bank has suppressed the fact from the learned CMM that the Petitioner was already in physical possession of the flat. The Petitioner has an agreement to sale in his favour. The borrower having agreed to sell the flat and the bank having agreed to accept the consideration/sale proceeds of this flat and adjust and appropriate them towards repayment of their dues, then, learned CMM was obliged to hold that application under Section 14 of the Act of 2002 made by the bank seeking his assistance deserves to be dismissed.

4. Upon hearing Mr.Thakur at some length and with his assistance perusing the writ petition and all annexures thereto, we are unable to agree. A stamp paper of Rs.100/- and purchased on 4th January 2014 purportedly witnesses a transaction/Memorandum of Understanding of 9th February 2014 between one Kuldeep Singh Sahani and the Petitioner. The said memorandum states that the purchaser agrees to purchase the flat for a total consideration of Rs.1.80 crores. On execution of the agreement, a sum of Rs.21 lakh has been paid by the Petitioner-purchaser. Then a further sum of Rs.71 lakh was withdrawn from Bank of India and treated as an advance. Thus, the claim is that a sum of Rs.21 lakh and Rs.71 lakh have been paid. The purchaser agrees to pay Rs.78 lakh by cheque before the date of execution of agreement for sale (recital no.4).

Then recital no.5 is struck off. Then recital no.6 and other recitals follow. Mr.Thakur would submit that such an agreement and under which the parties claim to have transferred the flat, claimed as a secured asset of the bank. The transfer is in favour of the Petitioner. The receipt at page 37 of the paper book and at page 38 acknowledges receipt of these monies and further sums which is evident from pages 39 to 42. Then, what we have on record is a document styled as sale deed. Page 47 of the paper book contains blanks and the date of sale deed is kept blank. The sale deed records this arrangement and in a receipt column appearing after the schedule, there are several blanks. They are through out in the sale deed. At the end of the agreement, names of witnesses are there but their signatures are absent. Then, there is a possession letter which the Petitioner is supposed to have signed. A copy of the same produced before us does not indicate that the Petitioner has filled in all the blanks or the seller is informed nor the co-operative housing society. Once the flat is in a co-operative housing society, then there are distinctive share certificates issued by that society. The transfer of shares is purported to be by a letter addressed by the Petitioner to the chairman at page 70 of the paper book. The date of that is also blank.

5. We do not see, therefore, how the bank can be faulted for not including the information about such a deal or transaction in its affidavit and which is required to be filed for seeking assistance of the Chief Metropolitan Magistrate under Section 14 of the Act of 2002. In such state of affairs and when there is also executed a leave and license agreement, copy of which is at page 74 of the paper

book, then all the more we do not agree with the learned counsel for Petitioner that any right, title or interest is created in favour of Petitioner in respect of the subject flat. The bank was not obliged to disclose any details of such a prima facie dubious and illegal deal. We do not see that the provisions of the Act of 2002 can be bypassed by such private arrangements and which are made by borrowers and third parties, like the Petitioner. The Petitioner cannot claim to be a bona fide purchaser and the bank is rightly not accepting and recognizing the transaction. Hence, there is no suppression of any fact much less any material one. There is no fraud either.

6. As a result of the above discussion, we do not think that an order under Section 14 of the Act of 2002 can be challenged in this petition by terming it as perverse or vitiated by any error of law apparent on the face of record. Once we have returned above findings, the bank cannot be said to have suppressed any material facts or perpetrated any fraud on the Court.

7. The writ petition has no merit and is accordingly dismissed.

(PRAKASH D. NAIK, J.) (S.C.DHARMADHIKARI, J.)

MST