

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5943 OF 2017**

Mr. Sanjay Santosh Kapoor

....Petitioner.

Vs.

Union Bank of India & Ors.

....Respondents.

Mr. Ajay Panickar a/w Ms. Swati Sutar i/by Ajay Law Associates for the Petitioner.

Mr. Jamshed Ansari, for Respondent No.1.

Mr. N.V. Bhutekar for Respondent No. 8.

CORAM : B.R. GAVAI AND

RIYAZ I. CHAGLA, JJ.

DATE : 9 JUNE 2017.

P.C.:-

Rule. Rule made returnable forthwith.

2 The present Petition arises out of the peculiar facts and circumstances of the case. It is the contention of the Petitioner that, he had purchased the property i.e. a flat in Respondent No.8-Society from Respondent No.2, in the year 2002. It is also the contention of the Petitioner that Respondent No.8-Society had given “*No Objection Certificate*”, as well as, also transferred the flat in the name of the Petitioner in the year 2002, itself.

3 The Petitioner came to know that an ex-parte order dated
21 January 2003, came to be passed in O. A. No. 1866 of 1999, by the
learned Presiding Officer, Debts Recovery Tribunal (DRT), Mumbai, in
respect of the flat purchased by him. The Petitioner preferred an
Appeal No. 100 of 2004 before the DRT, Mumbai. The learned
Presiding Officer, DRT, Mumbai by an order dated 27 December 2004
held that the DRT, Mumbai will not have jurisdiction to entertain the
Appeal.

4 The Petitioner, therefore, filed a Short Cause Suit No. 336
of 2005, before the City Civil Court, Mumbai. The said Suit also came
to be dismissed on 7 February 2006, holding that the City Civil Court
will not have jurisdiction.

5 The Petitioner thereafter, filed an Appeal before the Debts
Recovery Appellate Tribunal (DRAT), Mumbai being Appeal No. 223 of
2006. Initially, vide order dated 24 July 2014, the learned Presiding
Officer, DRAT, Mumbai had directed the Petitioner to deposit an
amount of Rs.1 Lac (Rupees One Lac only), which amount has been
deposited by the Petitioner. However, vide order dated 9 March 2017,

the learned Presiding Officer, DRAT, Mumbai has dismissed the Appeal. Being aggrieved thereto, the present Writ Petition.

6 The learned counsel appearing for the Petitioner states that, the Petitioner is being made to run from pillar to post. He further submits that, the Petitioner purchased the property-flat inasmuch as, there is no mortgage registered with the Society and the Society has also given "*No Objection Certificate*", while entering into the transaction.

7 Pertaining to the same, Mr. Ansari, the learned Counsel appearing for Respondent No.1-Bank fairly conceded that the mortgage is an equitable mortgage and not a registered mortgage.

8 By a settled principle of law, there cannot be a wrong, without remedy. The right of the party, needs to be adjudicated before an appropriate forum. Mr. Ansari, the learned counsel appearing for Respondent No.1-Bank fairly conceded that the Petitioner has an appropriate remedy under Sub-Section (25) of Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (for short, "*RDB Act*").

Not only this, but the DRAT, Mumbai has also recorded this submission of Respondent No.1-Bank and reproduced the same in the order. In that view of the matter, we find that the following order would meet the ends of justice:-

ORDER

- a) The Petitioner would make an Application under Section 19 (25) of the RDB Act, within a period of one month from today.
- b) The Petitioner would be given benefit of Section 14 of the Limitation Act, inasmuch as the Petitioner has bonafidely prosecuting the remedies before the various forum during this period.
- c) The parties shall maintain status-quo with regard to the reservation of the property-flat, which is the subject matter of the Petition for a period of eight weeks from today and the learned Presiding Officer of the DRT, Mumbai would pass appropriate orders on the Application, if made by the Petitioner, with regard to the interim protection prior to the said period.

- d) Insofar as the amount of Rs.1 lac (Rupees one lac only), which is deposited by the Petitioner is concerned, the appropriate order would be passed by the learned Presiding Officer of the DRT, Mumbai.
- e) Taking into consideration that the proceedings are pending for the considerable period, the learned Presiding Officer of the DRT, Mumbai is requested to expedite the proceedings.
- f) Rule made absolute, in the aforesaid terms.
- g) There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)