

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1507 OF 2016**

**The State Bank of India through
its authorised officer H. R. Kansara**

..Petitioner

Vs.

The State of Maharashtra & Ors

..Respondents

Mr. A. S. Chavan for the Petitioner

Mrs. S. D. Shinde APP for the Respondent State

Mr. Parag Joshi i/b Bhavin Bhatia for the Intervenor

Mr. V. N. Gole PSI Malad Police Station present

**CORAM :R. M. SAVANT, &
SANDEEP K. SHINDE, JJ
DATE : 7th AUGUST, 2017**

P.C.

1 The above Writ Petition has been filed principally for the relief that the Petitioner be provided with adequate police force so as to assist the Petitioner Bank or its representatives or the Court Receiver in taking possession of the property in question. The aforesaid relief is sought in the context of the order dated 5-10-2015 passed by the Recovery Officer DRT-II, Ahmedabad. By the said order, the premises in question which were auctioned and which are the premises in respect of which the relief is sought in the above Petition. In the context of the relief sought, clauses 6, 8 and 11 of the said order of the Recovery Officer, DRT-II, Ahmedabad are material and reproduced hereinunder: -

6. The Receiver, in order to maintain the law and

order while executing the order may apply to the concern police authority for necessary protection with sufficient / appropriate police force while executing the order.

8. The concerned police authority at Mumbai is also directed to remove the obstructor /s (if any) person who is in illegal possession from the premises and also to assist the receiver for execution of the possession process work at the site as requested by the C. H. Bank.

11. The court receiver is hereby authorised to serve a copy of this order to the Superintendent of the police, Mumbai and SHO of the concern police station for their compliance.

2 It seems that the said order is awaiting execution since the year 2015 as also the attempts to execute the said order in the past have turned futile. It is the grievance of the Learned Counsel for the Petitioner that though the police aid or protection has been provided. The police are not playing proactive role so as to facilitate the execution of the said order.

3 The Learned APP Mrs. Shinde counters the same by contending that having regard to the said order, only police aid can be given to the Petitioner Bank and that the police is not concerned with the execution of the said order. The Learned APP drew our attention to the order passed by the Learned Judge of the City Civil Court which is referred to in the letter dated 19-5-2015 of the Senior Inspector of Police, Malad Police Station, addressed to Sangeeta Athavale, the Court Receiver. In an unnumbered paragraph (2) of

the said letter, a Suit being S.C. Suit NO.503/476/2015 filed by Kaushik C Sanghani against Gopal C. Sanghani and the relief of injunction granted therein as not to oust Kaushik Sanghani, is referred to. It seems that the Petitioner Bank was joined as a party Defendant to the said Suit. However, the said letter does not disclose that any relief has been granted against the Petitioner Bank. It is on the said basis that the Learned APP states that the role of the police is limited and that the police cannot be a party or take any proactive steps towards execution of the order passed by the Recovery Officer DRT-II, Ahmedabad.

4 Having heard the Learned Counsel for the Petitioner and the Learned APP, in our view, the relief sought vide prayer clause (b) is required to be granted. As indicated above, the Petitioner Bank is only executing the order passed by the Recovery Officer, DRT-II, Ahmedabad, in the matter of handing over possession to the auction purchasers of the property in question. The said order passed by the Recovery Officer, DRT-II, Ahmedabad is obviously a sequitur to the adjudication which has taken place before the DRT-II, Ahmedabad and therefore the proceedings cannot be allowed to remain inconclusive and have to be taken to their logical end. It is not possible for us to accept the submissions of the Learned APP as the order passed by the Recovery Officer, DRT-II, Ahmedabad, makes it exfacie clear that the police have to aid the Court Receiver in executing the order of the Recovery Officer,

DRT-II, Ahmedabad and cannot remain as silent spectators. The police would be therefore obligated to use such force as would be found necessary when they are on site. The Suit filed between the Sanghani's prima facie appears to a stratagem adopted by the debtor to nullify the orders passed by the Recovery Officer, DRT-II, Ahmedabad. Hence the following directions :

- (i) The Senior Inspector of Police, Malad Police Station, is directed to provide police aid to the Petitioner Bank as and when the same requisitioned by it. The same would be at the cost of the Petitioner Bank.
- (ii) Since the order passed by the Recovery Officer, DRT-II, Ahmedabad, is to be executed, the police contingent would be required to use such force as would be necessary to get the said order executed for evicting the occupant.
- (iii) If at the first attempt it is not possible to execute the said order and the said process is to be carried out once again on some other date, the directions as given in the instant order would continue to apply for the subsequent date / or dates also.

5 With the directions as aforesaid, the above Criminal Writ Petition is disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]