

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.857 OF 2017

Vibha Pawar

Petitioner

versus

State of Maharashtra and others

Respondents

Mr.Rajesh M. Devgharkar with Mr.Prathamesh Ayare for Petitioner.

Ms.Medha Rane for Respondent no.2.

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

DATE : 29<sup>th</sup> March 2017

PC :

1. Not on board. Production of papers is permitted at 3.00 p.m.
2. This petition under Article 226 of the Constitution of India challenges an order passed by the Chief Metropolitan Magistrate dated 25th January 2017 in Case No.312/SA/2016. By the impugned order, an application under Section 14 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Securities Interest Act, 2002 ('the Act of 2002') filed by PNB Housing Finance Limited is disposed of. The order proceeds on the footing that the Respondents to that application namely the husband and mother-in-law of the Petitioner before us, are in

possession of the premises more particularly described in the writ petition as also in the order, a copy of which is at page 24 of the paper book. That constitutes a secured asset of the Respondent no.2. On that security, a sum was advanced by PNB Housing Finance Limited. The loan amount is crystallized in a notice under Section 13(2) of the Act of 2002 was Rs.28,82,265/-. As on 12th May 2016, a sum of Rs.30,38,986=39 Ps. is due and payable. We are now informed that the sum has mounted to around Rs.33 lakhs.

3. Learned Chief Metropolitan Magistrate has found that the amount was due and payable. The liability is admitted. Even the mortgage documents are undisputed.

4. It is in these circumstances and when the account of the husband as also mother-in-law of the Petitioner before us was declared as non performing asset, that a direction as complained has been issued.

5. The only contention raised before us is that the Petitioner has since fallen out with her husband Ashish Pawar. The matrimonial proceedings are pending before the competent matrimonial Court. Further, there are proceedings pending under the Protection of Women from Domestic Violence Act, 2005. In these proceedings, the Petitioner has made serious allegations against the husband as also in-laws. She is ousted from the house, which she claims to be her matrimonial home. Though not disputing that it is a secured asset of the bank, yet the the Petitioner contends that if the bank takes over the premises, Petitioner's valuable rights in property involved in the

substantive proceedings may be adversely affected. Further her and her minor son's future is uncertain.

6. After hearing both sides and finding that the Petitioner has availed of the remedy of an appeal under Section 17 of the Act of 2002, which is alternate and equally efficacious, we are disinclined to entertain the writ petition. We have found that the Petitioner can obtain all reliefs as are permissible in law so as to protect her right, title and interest in the property, if any. Presently, for the Petitioner to make an application in the pending proceedings under Section 17 and without prejudice to the rights and contentions of PNB Housing Finance Limited, we direct that if the Petitioner pays to PNB Housing Finance Limited a sum of Rs.10 lakhs within a period of three weeks from today, the PNB Housing Finance Limited not to take forcible possession of the property/mortgaged security till the application under Section 17 which is filed by the Petitioner in Debts Recovery Tribunal is disposed of.

7. In the event there is any default in complying with this direction, the Petitioner shall lose benefit of this order.

8. With a view to enable the Petitioner to arrange for and deposit a sum of Rs.10 lakh within a period of three weeks, she shall not be dispossessed from the subject immovable property. This order is passed on the condition that Petitioner will not induct any third party nor part with possession or transfer the immovable property/flat which is in her possession, till further orders from the competent Court.

9. The writ petition is disposed of by clarifying that we have not expressed any opinion on the rival contentions and on the merits of the controversy.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

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