Dond

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

WRIT PETITION LODG. NO.1415 OF 2017

Mrs. Safia Abdul Majid Dhanani ..Petitioner.

Vs

The Sahebrao Deshmukh Co-Operative Bank Ltd.
& Ors. ..Respondents.

Mr. Ibrahim Z. Merchant for petitioner.
Ms. Medha Rane, for Respondent No.1.

CORAM: A.S. GADKARI &
C.V. BHADANG, JJ.

DATE: 20 MAY 2017.
(Vacation Court)

P.C.:

1] It is the case of the petitioner that, she is a bonafide purchaser of the suit property for valuable consideration without notice. That the respondent No.2 is defaulter of the loan of respondent No.1-Bank. The respondent No.2 represented to the petitioner that the suit property is free from all encumbrances. That the petitioner was not aware about any encumbrances created in respect of the suit property and after coming to the knowledge that the respondent No.2 has committed the act of cheating, she lodged the crime bearing C.R. No.62 of 2014 with Vinoba Bhave Marg Police Station, Mumbai. The respondent No1-Bank initiated the proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **(SARFAESI Act**) for taking physical possession of the suit property and in pursuance of Order passed by the learned Metropolitan Magistrate has in fact taken possession of the suit property. The petitioner has filed the Securitisation Application bearing No.111 of 2017 for setting aside the sale and for restitution of the suit property. The petitioner has also filed an Interim Application bearing No.332 of 2017 (Exh.6) in the said S.A. No.111 of 2017. The said Interim Application No.332 of 2017 has been rejected by the Debt Recovery Tribunal-II, Mumbai by its Order dated 6th May 2017.

2] Feeling aggrieved by the said Order dated 6th May, 2017, the petitioner has preferred a Misc. Appeal bearing No.29 of 2017 which is pending for final adjudication before the Debt Recovery Appellate Tribunal, Mumbai. The petitioner has moved this petition for an urgent relief, as the Chairperson of the Debt Recover Appellate Tribunal, Mumbai is not available for performing its function from 20th May 2017 till 28th

May 2017 and the respondent No.1-Bank has, as per the auction notice has fixed the date to accept last installment towards auction sale on 21st May 2017 and the bank may hand over possession of the suit property to the prospective auction purchaser.

The substantive appeal preferred by the petitioner bearing No.29 of 2017 is pending for final adjudication before the Debt Recovery Appellate Tribunal, Mumbai. In the circumstances, we here by direct the respondent No.1 Bank that for a period of three weeks from today it shall not hand over the physical possession of the suit property to the prospective auction purchaser.

3] The petitioner is directed to move before the Debt Recovery Appellate Tribunal, Mumbai within the said period of three weeks. It is made clear that the said period shall not be further extended on any count.

4] It is made clear that, we have not dealt with any of the rival contentions of the parties and the same are left open to be raised before the Debt Recovery Appellate Tribunal, Mumbai in Misc. Appeal No.29 of 2017.

5] The Writ Petition is disposed off in the aforesaid terms.

(C.V. BHADANG, J.) **(A.S. GADKARI, J.)**