

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

WRIT PETITION NO.2448 OF 2010

Meenakshi U. Nishad and another ...Petitioners

Versus

State of Maharashtra and others ...Respondents

Mr. Vijayprakash Yadav for the Petitioners.

Mr. Kedar Dighe for the Respondent Nos.1 & 2.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 27th JULY, 2017

P. C. :

1. None appears for Respondent Nos.3 and 4. It appears that when the notice for admission was served, none appeared for Respondent Nos.3 and 4. Even notice of Rule was served on Respondent Nos.3 and 4, but none appeared for the Respondent Nos.3 and 4. We had called out the matter on 21.07.2017. On that date also, none appeared for Respondent Nos.3 and 4. However, in the interest of justice, we had adjourned the matter to 27.07.2017.

2 We have heard the Learned Counsel for the Petitioners.

3 We have also heard the Learned AGP in the matter.

4 It appears that the Respondent No.3 had affixed the notice dated 13.09.2010 upon the residential premises claimed by the Petitioners, wherein Petitioners were directed to hand over peaceful possession of the residential premises. The Chief Metropolitan Magistrate purportedly invoked Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (For short "SARFAESI Act").

5 The gravamen of the contention of the Petitioners is that the flat bearing No.303, B Wing, Green Vatika, Dattani Park, Poisar, Kandivali (East), Mumbai-400 101 is owned by the Petitioners. The same is the residential premises purchased by the Petitioners vide registered agreement of purchase dated 25.07.2003. It is further case of the Petitioners that Respondent No.4 sanctioned loan to the Petitioners on 19.09.2003 and the said property it appears was mortgaged with Respondent No.4 and since then the Petitioners are residing in the said premises. The dispute appears to be that one Manish Pandey had claimed the same to be his property and he had taken loan from Respondent No.3 and upon an action taken by the Respondent

No.3 under the provisions of Sections 13 and 14 of the SARFAESI Act the order was passed by the Chief Metropolitan Magistrate inter-alia the notice was affixed on the property.

6 It is clear that Petitioners were never heard in the said matter nor any notice was issued to the Petitioners at any point of time. The documents as filed on record, prima-facie demonstrates the case pleaded by the Petitioners.

7 Though repeatedly served, none appears for Respondent Nos.3 and 4 to assist the Court.

8 Considering the above, we pass the following order :-

- I) The impugned orders shall not operate as against the Petitioners and shall be deemed to be set aside as against the Petitioners.

9 In case Respondents seek to initiate any action in respect of the writ flat/property, then the same shall not be initiated without prior notice to the Petitioners and without hearing the Petitioners. Rule is accordingly made absolute in the above terms. No costs.

(A. M. BADAR, J.)

(S. V. GANGAPURWALA, J.)