IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 2086 OF 2018

PRIYANKA AMIT DESHMUKH AND ANOTHER
VERSUS
STATE BANK OF INDIA BRANCH AT SAVEDI THROUGH ITS BRANCH MANAGER

...
Advocate for the Petitioners : Shri C.R.Deshpande h/f Shri Deshpande Chaitanya C.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st February, 2018

Per Court:

1 After considering the brief submissions of the learned Advocate for the Petitioners, I was not inclined to entertain this petition keeping in view the impugned order, which prima facie, cannot be termed as being perverse or erroneous. However, the learned Advocate submitted that he would take instructions whether, the Petitioners can deposit some amount in this Court.

2 Since proceedings are initiated by the Financial Institution/ Bank claiming Rs.16 lac as an outstanding loan amount and the Petitioners are claiming to have deposited Rs.1,56,000/- till today, the learned Advocate for the Petitioners may take instructions whether, the

Petitioners are willing to deposit an amount of Rs.12 lac in this Court on or before 12.03.2018. Only then, this Court would consider the bonafides and contemplate issuing notices.

3 Stand over to 23.02.2018 for passing orders.

4 At this juncture, the learned Advocate for the Petitioners submits that he would like to canvass the case of the Petitioners today itself on its merits and they cannot deposit the said amount.

5 I have, therefore, considered the strenuous submissions of the learned Advocate for the Petitioners, who primarily contends that once the execution proceedings are initiated and the decree is sought to be executed, the proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitisation Act, 2002") cannot be initiated in the light of the view taken by the Calcutta High Court in the matter of *Frontline Corporation Limited vs. Punjab and Sindh Bank, AIR 2017 Calcutta 172*.

6 Further contention is that by the decree of the Trial Court, simple interest at the rate of 12% has been permitted for recovering the loan amount of Rs.3 lac, which the Petitioners have availed of in the year 2000. At the most, the outstanding loan amount would be less than Rs.10 lac even considering the decree of the Trial Court. The Petitioners have already paid Rs.1,56,000/- towards the loan repayment. Petitioner No.2

has suffered brain hemorrhage and is taking treatment. In these circumstances, the initiation of proceedings under the Securitisation Act, 2002 deserves to be stayed.

7 It is further pointed out that the Respondent/Bank has issued a letter dated 27.04.2017 to their Advocate representing them in Special Darkhast No.109/2009 that the physical possession of the mortgaged flat of these Petitioners has already been taken in the presence of the Circle Officer, Talathi and concerned Advocate. As the physical possession of the mortgaged house property has been taken, the arguments under Order 21 Rule 54 of the Code of Civil Procedure seeking attachment of the immovable property, can be avoided.

8 The learned Advocate for the Petitioners further submits that if liberty is granted, the Petitioners would sell the said mortgaged flat in the presence of the Bank officials through a transparent sale transaction and repay the amounts that are outstanding towards them within a specific period.

9 Having considered the above submissions and keeping in view that the mortgaged house property has already been possessed by the Bank after it has taken the physical possession, it would always be open to the Petitioners to approach the Bank either in the execution proceedings or in the proceedings under the Securitisation Act, 2002, if any and put forth a proposal that they would sell the mortgaged flat as per the

statement made.

10 The learned Advocate for the Petitioners vehemently submits that once the Financial Institution has taken recourse to the execution proceedings, they cannot initiate action under Section 13 of the Securitisation Act, 2002.

11 The Honourable Supreme Court has dealt with a similar situation in *Mardia Chemicals Limited vs. Union of India and others, 2004 (4) SCC 311* and has concluded that Section 13 of the Securitisation Act, 2002 would permit the Financial Institution to initiate the steps with regard to the attached property. Any grievance of the borrower on the said count can be redressed through Section 17 of the Securitisation Act, 2002. A similar view has been taken by the Division Bench of this Court in the matter of *M/s Asha Oil Foods Private Limited vs. The Jalgaon Janta Sahakari Bank Limited and others, 2005 (2) ALL MR 721*, when the learned Division Bench dealt with the issue of initiating the recovery proceedings under Section 101 of the Maharashtra Cooperative Societies Act, 1960 as well as resorting to Section 13 of the Securitisation Act, 2002. The learned Division Bench has concluded that the contention of the Petitioners that the remedy under Section 13 of the Securitisation Act, 2002 would be barred, is illusory and with total inadvertence to the law laid down by the Honourable Supreme Court in the *Mardia Chemicals case*

(supra).

12 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. The Executing Court has rightly rejected the application of the Petitioners seeking injunction against the Decree Holder for proceeding under the Securitisation Act, 2002. This Writ Petition is, therefore, dismissed.

kps **(RAVINDRA V. GHUGE, J.)**