IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.577 & 820 OF 2018

WRIT PETITION NO.577 OF 2018

Mr. Surendra Appa Shirodkar … Petitioner

Versus

Bank of Maharashtra & 2 Ors. … Respondents

Mr. S.N. Joshi with Ms. Sameera Bhat, Advocates for the Petitioner.
Mr. Ajay Kumar, Advocate for Respondent No.1.

AND

WRIT PETITION NO.820 OF 2018

Mr. Surendra Appa Shirodkar … Petitioner

Versus

Bank of Maharashtra & 4 Ors. … *Respondents*

Mr. S.N. Joshi with Ms. Sameera Bhat, Advocates for the Petitioner.
Mr. Ajay Kumar, Advocate for Respondent No.1.
Mr. A. Jamadar, Additional Government Advocate for the Respondents No.3 to 5.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 12 September 2018.

P.C. :

By this petition, the Petitioner, who has filed both these petitions, has sought certain reliefs against the respondent – Bank in

respect of the loan availed by him. The Respondent - Bank had proceeded to attach a shop of the Petitioner. When the petition was moved against the order of attachment, the Division Bench of this Court on 13 August 2018 passed the following Order :

> *"Heard learned counsel for the petitioner on the question of admission.*
>
> 2. *Issue notice to respondents. Adv Ajay Kumar waives service of notice on behalf of respondent no. 1. Learned Additional Government Advocate waives service of notice on behalf of respondent no.3, 4 and 5. For the present no notice is required to respondent no. 2.*
>
> *3. Preliminary reply has been submitted by respondent no. 1. The same be taken on record. Learned counsel for respondent no. 1 submits that without prejudice to rights and contentions about the maintainability of his petition, if the petitioner is willing to deposit Rs.29,75,000/-, respondent no.1 shall release the attached shop of the petitioner. Learned counsel for the petitioner on instructions submits that the petitioner will deposit the said amount of Rs.29,75,000/- within two weeks from today. Recording the said statement, we direct that on deposit of the said amount by the petitioner, respondent no.1 shall immediately release the petitioner's shop from attachment. For reporting compliance, the matter be placed on 3 September 2018."*

2. Thereafter, on 3 September 2018, the following order was passed :

> *"On 13 August, 2018, the following order was passed:*
>
> *Heard learned counsel for the petitioner on the question of admission.*
>
> *2. Issue notice to respondents. Adv Ajay Kumar waives service of notice on behalf of respondent no. 1. Learned Additional Government Advocate waives service of notice on behalf of respondent no.3, 4 and 5. For the present no notice is required to respondent no. 2.*
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> *3. Preliminary reply has been submitted by respondent no. 1. The same be taken on record. Learned counsel for respondent no. 1 submits that without prejudice to rights and contentions about the maintainability of his petition, if the petitioner is willing to deposit Rs.29,75,000/-, respondent no.1 shall release the attached shop of the petitioner. Learned counsel for the petitioner on instructions submits that the petitioner will deposit the said amount of Rs.29,75,000/- within two weeks from today. Recording the said statement, we direct that on deposit of the said amount by the petitioner, respondent no.1 shall immediately release the petitioner's shop from attachment. For reporting compliance, the matter be placed on 3 September*

2018."

4. A request is made on behalf of the learned Counsel for the Petitioner on the ground that he is not available. The learned Counsel for Respondent No.1 states that as per his instructions, the amount is not deposited with the Bank. By way indulgence, we grant one week's further time to the Petitioner to deposit the amount. S.O. to 10 September 2018.

5. In the meanwhile, the Petitioner will not create any third party rights in respect of the shop in question, nor part with its possession."

3. Both the petitions were taken together along with the Civil Application and thereafter on 10 September 2018 and the following order was passed :

"It appears that the amount of Rs.29,75,000/- has not been deposited in the bank. The learned counsel for the Petitioner sought to give various explanations. If there was any impediment, the Petitioner could have used money transfer or sent a demand draft. We grant further time till 12 September 2018. The learned counsel for the Respondent No.1-Bank states that if the demand draft even of the third party is produced by the Petitioner with an authorisation letter to that effect or electronic transfer is made, the bank will have no objection. Stands over to 12 September 2018."

4. The indulgence shown to the Petitioner was on a statement

regarding deposit of the amount. The learned Counsel for the Petitioner has candidly informed us that the Petitioner has not deposited the amount and he does not have specific instructions that he will deposit the amount.

5. Firstly, the Petitioner had invoked an equity jurisdiction of this Court. That the Petitioner has availed of loan is clear from the records. Indulgence was shown inspite of default, on a statement made to this Court that the amount will be deposited. The Petitioner is being honest with the Court. Such conduct of litigant, when he seeks to invoke the writ jurisdiction has to be taken note of cannot be countenanced. The Petitioner is not entitled to equitable relief in writ jurisdiction from this Court. Both these Writ Petitions are rejected. The Civil Application accordingly stands disposed off.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***