

Amk

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1691 OF 2018

Smt. Ramona Furtado .. Petitioner
Vs.
State of Maharashtra & Ors. .. Respondents

Mr. V. N. Ajikumar for the Petitioner.
Mr. A. P. Vanarase, AGP for Respondent Nos.1 & 4.
Mr. Rajesh A. Tekale for Respondent Nos.2 & 3.
Mr. Sachin Chavan for Respondent No.5.
Mr. Shivraj Patre i/b Sameer N. Patil for Respondent No.6.

**CORAM : K. K. TATED AND
N. J. JAMADAR, JJ.**
DATE : 2nd NOVEMBER, 2018.

P. C.

1. Heard learned Counsel for the parties. After arguing for some time, learned Counsel for the Petitioner and Respondent Nos.2 and 3 submit that the Petition can be disposed of by Minutes of Order dated 02.11.2018. They tender the copy of the Minutes of Order duly signed by the Advocate for the Petitioner and Respondent Nos.2 and 3. The same is taken on record and marked 'X' for identification. The same reads as under:

"MINUTES OF ORDER

1. *The Petitioner is neither borrower nor guarantor for the credit facility granted by Respondent No.2 Bank. The Petitioner is the bonafide purchaser and owner of **Flat No.101** on first Floor, admeasuring 1040 sq. ft. (096.65 sq.mtrs.) + 18.58 sq. mtrs. Open Terrace, Built up area including the area of Balcony, Cupboard, Loft & 200 Sq. Ft, Terrace situated and 1330 sq. ft. Super Built Up Area*

including Terrace situated on Plot No.6, admeasuring about 150.05 sq. meters situated at Sector No.1, at New Panvel (E), Navi Mumbai, Dist. Raigad for the total lumpsum consideration amount of Rs.10,00,000/- in the Building to be known as XENA PALACE show on the plan annexed in the Registered Agreement for sale dated 19/05/2003 (hereinafter referred to as “**said Flat No.101**”).

2. The Petitioner has filed the above Writ Petition interalia challenging the impugned dispossession notice dated 1/02/2018 (Exh-G to Petition) issued by Mandal Adhikari, Panvel, Dist for taking physical possession of the suit property by claiming Deed of Mortgaged dated 6/4/2015.

3. The Recovery Officer of Respondent No.2 Bank has taken symbolic possession of subject residential Bungalow “Xena Villa” on 31/7/2017 by issuing Possession Notice under Rule 107(11)(d-1) of the Maharashtra Co-op Societies Rules, 1961 on 1/8/2017.

4. The Respondent No.2 Bank has made statement that, the Petitioner can approach to the Recovery Officer under Rule 107(19)(a) of said MCS Rules by raising objection/claim of said Flat No.101 as mentioned in the Registered Agreement for sale dated 19/5/2003 executed in her favour instead of proceeding further in the above Writ Petition.

5. The Petitioner has agreed to approach before Recovery Officer of Respondent No.2 Bank and file claim/objection and/or challenge the Possession Notice dated 1/8/2017 as well as action of Respondent No.2 Bank qua rights, title interest accrued to her under the said Registered Agreement for sale dated 19/5/2003 by 7th December, 2018 from today.

6. The Recovery Officer shall hear and decide the objection/Application of the Petitioner in accordance with law.

7. The Respondent No.2 Bank has agreed that the ad-interim order granted by this Hon’ble Court in respect of said Flat No.101 of Petitioner shall continue and they shall not take physical possession or any coercive action against the said Flat No.101 of the Petitioner in pursuance to the order dated 14/12/2017 (Exh-A at Page No.149) as well as Notice dated 1/2/2018 issued by Mandal Adhikari, Panvel (Exh-G at page No.80). However, in case of any adverse order is passed by the

Recovery Officer of Respondent No.2 Bank, the said interim protection shall continue for a period of One month from the date of communication of the said order to the Petitioner.

8. *In of the aforesaid terms, the above Writ Petition may be disposed-off accordingly.*

Dated this 2nd day of November, 2018”

2. The Writ Petition stands disposed of in terms of the Minutes of Order dated 02.11.2018.

3. It is made clear that the Petitioner are restrained to create third party right, title and interest in respect of the suit property till further orders from the Recovery Officer.

[N. J. JAMADAR, J.]

[K. K. TATED, J.]