

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.820 OF 2018
IN
WRIT PETITION NO.1313 OF 2018

Mr.Ketan Karani

...

... Applicant

In the matter between :

Mr. Ketan Karani

... Petitioner

V/S

State Bank of India and another

... Respondents

...

Shri. Sidharath Samantaray i/b Shri Vivek Phadke for Petitioner/Applicant.

Mr. Deelip S. Paranjpe for Respondent No.1/Bank.

Ms. Pallavi Kulkarni for Respondent No.2.

...

CORAM : A.A. SAYED &

RAVINDRA V. GHUGE, JJ.

DATED : 19 APRIL 2018

P.C.:

1. By the above Petition, the Petitioner had inter alia challenged the order of DRT dated 18 January 2018 refusing to grant interim protection of staying the taking over of the physical possession of the secured asset viz. Flat No.403, 3rd Floor, Chandralok, "B" Block, Manav Mandir Road, Malabar Hill, Mumbai-400 006 (hereinafter referred to as the said Flat No.403) consequent to the order of the Chief Metropolitan Magistrate under section 14 of the SARFAESI Act.

2. When the matter had come up before this Court on 1 February 2018, we had disposed of the Petition by passing the following order:

“1. Leave to add the tenant as party Respondent. Amendment to be carried out by tomorrow.

2. This Petition has been filed impugning the order of DRT rejecting the interim relief sought by the Petitioner in S.A. No.11 of 2018. According to the Petitioner, though the Appeal has been filed before the DRAT, the Presiding Officer, DRAT is not available and, therefore, the Petitioner could not get the matter circulated before DRAT.

3. Learned Counsel for the Petitioner submits that the possession of the flat in question was to be taken today at 12.00 noon. He states that the Petitioner and/or the tenant who is in occupation of the flat, would pay the amount of Rs.3,20,00,000/- to the Respondent Bank if some time is granted to them.

4. Since the matter is already before the DRAT, we are not inclined to keep the Petition pending in this Court. The Petition is, therefore, disposed of in the following terms :

i) The Petitioner shall file an undertaking before this Court by tomorrow i.e. 02.02.2018 that the Petitioner and/or his tenant would deposit an amount of Rs.3,20,00,000/- with the Respondent Bank on or before 09.03.2018.

ii) The Petitioner shall handover the draft of Rs.15,00,000/- to the Respondent Bank during the course of the day.

iii) The Petitioner shall also file an undertaking of the tenant who stated to be in possession of the flat by 12.02.2018 (as he stated to be out of Mumbai) to the effect that he and/or the Petitioner would deposit amount of Rs.3,20,00,000/- with the Respondent Bank by 09.03.2018.

iv) It is clarified that if any amount is paid in the DRT/DRAT, that amount would be adjusted in the aforementioned amount of Rs.3,20,00,000/-.

v) This order is passed without prejudice to the rights and contentions of the parties.

vi) It is further made clear that in the event any default is committed in respect of any compliance stipulated above, the benefit of this order shall not be available to the Petitioner/tenant.

vii) The parties shall appear before the DRAT on 12.03.2018 at 11.00 a.m. with copy of this order.

viii) The Respondent Bank shall defer taking possession of the said flat until 12.03.2018 or until the failure of any of the aforesaid compliances being made by the Petitioner and/or the tenant, whichever is earlier.”

3. Though the Petitioner handed over the demand draft of Rs.15 lakhs to the Respondent No.1-Bank, the Petitioner was not able to pay the balance amount to the Respondent-Bank by 9 March 2018. The Petitioner

therefore moved the Court for extension of time to deposit the balance amount. On 8 March 2018, we passed the following order:

“1 Learned Counsel for the Respondent No.1 Bank states that if the amount in terms of the order dated 1 February 2018 is paid by the Petitioner, the Respondent No.1 Bank will release the flat in question. Learned Counsel for the Petitioner states that the amount would be paid on 13 March 2018 by a Demand Draft in terms of the order dated 1 February 2018 and time may be extended. Time is accordingly extended.

2 It is expected of the Petitioner to bring the Draft of Rs.3,05,00,000/- (after adjustment of Rs.15,00,000/-) on that day.

3 Stand over to 13 March 2018.”

4. It may be stated here that since an amount of Rs.50 lakhs was already deposited with the DRAT by the Respondent No.2-Sunny Jain, we had in the order dated 1 February 2018, recorded that this amount would be adjusted in the amount of Rs.3.20 crores. The matter was thereafter adjourned from time to time for reporting compliance.

5. On 27 March 2018, we were informed by the learned Counsel for the Petitioner that the Petitioner was unable to make arrangements to pay the balance amount. We therefore recorded the statement of the learned Counsel for the Petitioner that the Petitioner would hand over the

possession of the said Flat No.403, 3rd Floor, Chandralok, "B" Block, Manav Mandir Road, Malabar Hill, Mumbai-400 006 to the Respondent No.1-Bank by 31st March 2018.

6. On 31 March 2018, which was Saturday, the Petitioner moved the above Civil Application No.820 of 2018 seeking the following reliefs:

(a) that this Hon'ble High Court be pleased to direct the Respondent bank to accept the aggregate sum of Rs.3.20 Crores towards release of Flat No.403, 3rd Floor, Chandralok, B-Block, Manav Mandir Road, Malabar Hill, Mumbai- 400 006;

(b) that this Hon'ble Court be pleased to direct the Respondent bank to issue conditional NOC in favour of the Edelweiss Housing Finance Ltd. for releasing Flat No.403, 3rd Floor, Chandralok, B-Block, Manav Mandir Road, Malabar Hill, Mumbai-400 006;

(c) that this Hon'ble Court be pleased to direct the Registrar, DRAT, Mumbai to release a sum of Rs.50 lakhs deposited by Respondent No.2 in favour of Respondent bank towards part of the release amount of Rs.3.20 crores;

(d) that this Hon'ble Court be pleased to direct the Registrar of the DRAT to release the amount of accrued interest over the said sum of Rs.50 lakhs in favour of the Respondent No.2;

7. In view of the urgency expressed, the Bench assembled on Saturday, 31 March 2018. It was represented to us that the Petitioner has been able

to make arrangements for paying the balance amount by entering into an arrangement with one purchaser viz. M/s.Monopoly Innovation Pvt. Ltd. who has taken a home loan from one Edelweiss Housing Finance Ltd., for a sum of Rs.2.55 crores. The Petitioner annexed a copy of a demand draft of Rs.2.55 crores at Exh.C to the Civil Application. It was submitted before us that a sum of Rs.50 lakhs was already deposited with the Registrar, DRAT, and a sum of Rs.15 lakhs was also paid to the Respondent Bank in terms of the order dated 1 February 2018 and together with the demand draft of Rs.2.55 crores, the total would come to Rs.3.20 crores.

8. After hearing the learned Counsel for the Petitioner, we had passed the following order on 31 March 2018:

“1. The Bench has assembled today in view of urgency.

2. Heard the Learned Counsel for the Petitioner. The Representative of Respondent Bank Shri. Shrikrishna V. Kulkarni, Deputy Manager, SBI, SAMB-II Branch is also present. We have perused the earlier orders. Learned Counsel for the Petitioner states that the Petitioner is in process of selling the flat in question to one Monopoly Innovations Pvt. Ltd. The Petitioner has enclosed a copy of Demand Draft of Rs.2,55,00,000/- at Exhibit 'C' to the Civil Application. The statement of the Learned Counsel for the Petitioner is recorded that as of now the said flat is still in possession of the Petitioner.

3. The Petitioner is permitted to retain possession of the said flat until next date. Stand over to 6th April, 2018 at 3.00 p.m.

4. Both the parties shall act on the ordinary copy of the order duly authenticated by the Associate of this Court.”

9. Thus, on the representation of the Petitioner that the matter would be settled as the Petitioner had found a purchaser for the said Flat No.403 and the amount of Rs.3.20 crores would be paid to the Respondent No.1-Bank, we had permitted the Petitioner to retain the possession of the said flat until the next date.

10. On 6 April 2018, we passed the following order:

“1 The Applicant shall deposit the demand draft of Rs.2,55,00,000/- with the Registrar of this Court by 11.04.2018. The Respondent- Bank shall deposit the original title deeds in respect of the flat in question also alongwith Index with the Registrar of this Court on 11.04.2018.

2 List the Petition on 13.04.2018.”

11. In terms of the order dated 6 April 2018, the Respondent No.1-Bank deposited the original Title Deeds in respect of the said Flat No.403 alongwith an Index, with the Registrar of this Court. Copies of the Title Deeds alongwith Index were also furnished to the learned Counsel for the Petitioner. The Petitioner, however, did not deposit the demand draft of Rs.2.55 crores with the Registrar of this Court as directed.

12. On 16 April 2016 we passed the following order:

“1. On 13.04.2018 the following order was passed :

“1. Despite the order dated 6 April 2018, though the Respondent/Bank has deposited the original title deed, the Applicant has failed to deposit the demand draft of Rs.2,55,00,000/- with the Registrar of this Court which was to be deposited by 11 April 2018.

2. List the Petition on 16 April 2018 at 3 p.m.”

2. Learned Counsel for the Petitioner submitted that the concerned Officer of Edelweiss Housing Finance Ltd is ready to release the demand draft of Rs.2,55,00,000/-. However he is afraid that he may lose his employment if the originals of the title deeds are not released.

3. In the circumstances, we clarify that on the deposit of demand draft of Rs.2,55,00,000/- with the Registrar of this Court, we propose to pass an order for release of the original title deeds.

4. Stand over to 18.04.2018.”

13. Learned Counsel for the Respondent No.2-Mr.Sunny Jain submitted that pursuant to the order dated 18 September 2017 of the DRAT in Misc.Application No.1022 in Appeal No.140 of 2017, the Respondent No.2 has deposited an amount of Rs.50 lakhs in the name of the Registrar, DRAT, Mumbai with the Respondent No.1-Bank. She submitted that she has instructions from the Respondent No.2 to consent to the appropriation

of the amount of Rs.50 lakhs alongwith accrued interest, if any, by the Respondent No.1-Bank. She submitted that Misc.Application (I) No.262 of 2018 in Appeal No.140 of 2017 has been filed before the DRAT today by the Respondent No.2 for a direction to the Registrar,DRAT, to release the sum of Rs. 50 lakhs deposited by the Respondent No.2 in favour of the Respondent No.1-Bank.

14. Learned Counsel for the Petitioner shall handover the demand draft of Rs.2.55 crores to the learned Counsel for the Respondent No.1-Bank during the course of the day. It is pointed out that the Respondent No.1-Bank has now received/will receive an amount of Rs.3.20 crores in the following manner:

Rs.15 lakhs	: Paid vide Demand Draft as recorded in the order dated 1 February 2018.
Rs.2.55 crores	: Demand Draft in favour of the Respondent No.1-Bank, to be handed over to the learned Counsel for the Respondent No.1-Bank during the course of the day.
Rs.50 lakhs	: Deposited by the Respondent No.2-Sunny Jain in the name of the Registrar of DRAT, with the Respondent No.1-Bank pursuant to the order of the DRAT in M.A.No.1022/2017 in Appeal No.140 of 2017.

15. We may state here that the DRAT, while passing the order dated 18 September 2017, had recorded that according to the Respondent No.1-Bank the value of the flat is Rs.3.06 crores. However, in our order dated 1 February 2018, we had increased the amount and directed that the amount of Rs.3.20 cores to be paid to the Respondent No.1-Bank towards the value of the said flat. We had also in the order dated 8 March 2018 recorded the statement of the learned Counsel for the Respondent No.1-Bank that if the amount in terms of the order dated 1 February 2018 is paid by the Petitioner, the Respondent No.1 Bank will release the flat in question.

16. Inasmuch as, the matter was likely to be worked out, this Court had shown a lot of indulgence to the Petitioner. We record our appreciation of the learned Counsel for the Respondent No.1-Bank and the officers of the Respondent No.1-Bank who have been very co-operative.

17. We therefore dispose of the Civil Application by passing the following order:

ORDER

(i) We record that the demand draft of Rs.2.55 crores shall be handed over by the learned Counsel for the Petitioner to the Respondent No.1-Bank during the course of the day;

(ii) We permit the Respondent No.1-Bank to appropriate the amount of Rs.50 lakhs with accrued interest deposited in the name of the Registrar, DRAT, Mumbai with the Respondent No.1-Bank under the order of DRAT dated 18 September 2017 in M.A.No.1022 of 2017 in Appeal No.140 of 2017. A formal order shall be passed by the DRAT to this effect allowing the Misc.Application (I) No.262 of 2018 in Appeal No.140 of 2017 filed by the Respondent No.2 before the DRAT. The learned Counsel for the parties undertake to appear before the DRAT on 25 April 2018 at 11 a.m. and produce a copy of this order, when such formal order shall be passed by DRAT. Necessary office formalities shall be completed by the learned Counsel for the Petitioner and the learned Counsel for the Respondent No.2;

(iii) We make it clear that the Respondent No.1-Bank is also entitled to the accrued interest, if any, on the said sum of Rs.50 lakhs;

(iv) The Registrar of this Court shall hand over the original Title Deeds alongwith Index, which has been deposited by the Respondent No.1-Bank in terms of the order dated 6 April 2018, to the Petitioner forthwith;

(v) We make it clear that the said Flat No.403 shall stand released from any charge, however, the Respondent No.1-Bank shall be free to proceed against the Petitioner for the balance outstanding dues;

(vi) The Respondent No.1-Bank shall co-operate in the transfer of the said flat to the name of the Purchaser.

(RAVINDRA V. GHUGE,J.)

(A.A.SAYED, J.)