

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.906 OF 2018
IN
WRIT PETITION NO.157 OF 2018

Janakalyan Sahakari Bank Ltd. & Anr.Applicants
IN THE MATTER BETWEEN
Premlaksaha R. Padubidri & Ors.Petitioners
V/S
The State of Maharashtra & Ors. ...Respondents

Mr. Atul Damale, Senior Counsel a/w Mr. Tanmay Vispute and Ms. Nilima Sarvagoad I/b Mr. Onkar Warange for the for the Applicants.
Mr. A.A. Alaspurkar, AGP for the Respondent Nos.1, 3 and 5 to 8/State.

**CORAM : A.A. SAYED &
RAVINDRA V. GHUGE, JJ.**
DATE : 03 MAY 2018.

ORDER:

1 By this Application, the Applicant Bank has put forth the following prayers under paragraph 22 (a) and (b) as under:

- “a) This Hon'ble Court be pleased to direct the Respondent Nos.1 and 2 to hand over vacant peaceful possession of the said property to the Applicant Nos.1 and 2;
- b) Pending the hearing and final disposal of the present Writ Petition on its merits, this Honourable High Court be pleased to appoint Applicant No.2 or Receiver attached to the Honourable High Court as Receiver of the property situated at Row House No.12, Arinda Co-operative Housing Society Ltd., Sector 10, Vashi, Navi Mumbai - 400 703.”

2 On 11 April 2018, on the request of the original Petitioner/ Respondent Nos.1 and 2 in the Civil Application, we had adjourned the matter. Subsequently on 18 April 2018 Mr. Mathew Nedumpara, learned Counsel for the original Petitioner stated that a Reply to the Civil Application would be filed and he would put forth his submissions on behalf of the original Petitioner on the next date. On 25 April 2018, the matter was again adjourned. The learned Advocates were put to notice that the Civil Application would be heard today. Despite the same, none has appeared on behalf of the original Petitioner before us. We have therefore heard the learned Senior Advocate on behalf of the Applicants and the learned AGP on behalf of the State.

3 The Applicant Co-operative Bank had proceeded against the original Petitioner who is the original borrower on account of the defaults committed in the repayment of the loan facilities extended to him. After a Recovery Certificate was issued under section 101 of the Maharashtra Co-operative Societies Act, 1960, and after following the due process, the Applicant Bank approached the District Magistrate for seeking permission to take the physical possession of the property situated at 12, Arinda Co-operative Housing Society Ltd., Sector 10, Vashi, Navi Mumbai – 400 703.

Pursuant to the same, the District Magistrate passed an order on 16 July 2016 directing the taking over of the physical possession of the property at issue.

4 The Petitioner original borrower filed the present Writ Petition No.157 of 2018. Since the taking over of the physical possession of the property was scheduled on 20 February 2018, the Writ Petition was moved by the Petitioner for seeking orders from this Court. The contention of the Applicant Bank is that the Circle Officer in the presence of the Bank Officials has taken actual physical possession of the property at 12.35 p.m. on 20 February 2018.

5 On 20 February 2018 in the Civil Application No.441 of 2018 in above Writ Petition No.157 of 2018 filed by the original Petitioner this Court directed that status quo as on date would be maintained till 22 February 2018.

6 The grievance of the Applicant Bank is that on 22 February 2018 the Petitioner has broken the lock and the seal that was placed on the door of the property by the Circle Officer while taking over the physical possession. The Petitioner has forcibly taken the possession of the said property.

7 The learned AGP has placed the original record before us since the First Information Report was lodged against the Petitioner with the concerned police station on 22 February 2018. We find from the First Information Report that the Petitioner is alleged to have broken the lock and seal and has forcefully taken the possession of the property at issue. We have also gone through the Complaint lodged by the Informant namely, Mohnish Ramsurat Rajak.

8 The Circle Officer, Belapur. Shri Takwekar had taken the possession of the property on 20 February 2018 at about 12.40 p.m. On 22 February 2018 at about 4 p.m. the Petitioner and his brother have used a hammer to break open the lock. Two guards namely, Ramchand Shivasharan and Amol Mahendrakumar Dube have also recorded their statements with the Vashi Police stating that the Petitioner Premlaksaha and his brother Kamalaksh have broken open the lock and have forcibly taken the possession of the property.

9 Though the learned Counsel for the original Petitioner has chosen not to appear before us today, we have considered the Affidavit-in-Reply filed on behalf of the original Petitioner on 27 April 2018 in response to this

Civil Application, threadbare. We find from paragraph 3.1 that the original Petitioner has conceded that the Writ Petition was taken up by this Court on 20 February 2018 at 3.30 p.m. and thereafter the order directing 'status quo as existing then' up to 22 February 2018 was passed. Besides the said statement, the original Petitioner has contended in the Affidavit-in-Reply that as status quo order was granted by this Court, he had not lost possession.

10 The issue that requires consideration is that when this Court passed an order after hearing the Petitioner in this Writ Petition after 3.30 p.m. on 20 February 2018, whether the Petitioner was still in possession of the property or whether he was dispossessed by the Circle Officer under the orders of the District Magistrate passed under section 14(3) of the SARFAESI Act.

11 It is apparent from the Taba Pavti as well as the Report of the Circle Officer dated 20 February 2018 placed before us by the learned AGP that the possession of the property was taken at about 12.35 p.m. in the presence of the Bank Officers. This clearly indicates that when this Court passed an order in the Writ Petition, the possession of the property was already taken in deference to the order of the District Magistrate. In the

Affidavit-in-Reply filed by the Petitioner, the Petitioner concedes that this Court had heard the matter after 3.30 p.m. on the same day.

12 What is glaring is that the Petitioner Premlaksaha has recorded his statement in the police station on 22 February 2018 and has clearly admitted that his Petition was heard by this Court after 3 p.m. and since status quo order was passed, he along with his brother Kamalaksh had used a 'channi' and hammer and had broken open the lock and seal on the said property. The Petitioner was seen by the watchman while breaking open the seal and lock installed by the Circle Officer. As such, it becomes apparent that taking undue advantage of the order passed by this Court in the Writ Petition, the Petitioner has broken open the lock and has forcibly re-entered the property.

13 In the light of the above, the Civil Application stands allowed. Hence, the following order:

ORDER

"i) The Applicant No.2 – the Special Recovery Officer is appointed as a Court Receiver with regard to the property Row House No.12, Arinda Co-operative Housing Society Limited, Sector 10, Vashi, Navi Mumbai.

- ii) The Court Receiver shall take assistance of the concerned Police Station Vashi for taking over the possession of the said property - Row House No.12. After taking over the possession, the Court Receiver shall hand over the said possession to the Applicant Bank forthwith.
- lii) The Police authorities shall extend necessary protection and assistance to the Court Receiver.
- iv) The Applicant Bank shall continue to act as an agent of the said property without royalty and security.”

(RAVINDRA V. GHUGE, J.)

(A.A. SAYED, J.)

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