

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO. 19964 OF 2018

Citibank N.A. .. Petitioner
Vs.
Ms.Ami Vishal Pandya and anr. .. Respondents

Mr.M.B.Kare I/b GNP Legal, for the Petitioner.
Mr.Pankaj Uttorodhi, for Respondent No.1.
Mr.Prakash Naik - Respondent No.2 present in-person.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.
DATE : 14th AUGUST 2018**

P.C. :

. The impugned order of DRAT dated 04/07/2018
reads as follows.

. This application is filed seeking circulation for urgent hearing of the interim application filed in Appeal on Lodging No.433 of 2018 which is preferred against order dated 02.05.2018 of Debts Recovery Tribunal No. II, Ahmedabad.

2. Advocate for Appellant submitted that as per the impugned order, first respondent herein is directed to pay the amount to appellant herein within a period of 30 days to redeem the property and on such payment bank is directed to hand over physical possession. It is submitted as Appeal is pending Appellant has returned the Demand Draft given by the Respondent No.1 in

compliance of the order of Tribunal below and unless stay application is taken up, the Appellant would suffer irreparable loss.

3. I have seen the impugned order attached to this application. Tribunal below clearly recorded a finding that there is no service of sale notice on first Respondent herein and as the first Respondent is ready to pay back entire amount and redeem the mortgage, Tribunal below directed the first Respondent herein to pay the entire amount in stipulated time and on such payment directed the bank to deliver back physical possession. When the bank is concerned with realization of money and the first Respondent herein is directed to pay entire amount, I am unable to understand the difficulty of the bank to receive such amount and deliver back physical possession. The contention of ld.counsel for Appellant is that if the amount is received, their Appeal would become infructuous.

4. I am not in agreement with submission of ld.Counsel for appellant, because in case the Appeal of the Appellant is allowed they can always seek for restitution and in that way no loss would be caused to the Appellant. Therefore, I do not find any urgency to take up the matter, particularly when there is no normal functioning of the Tribunal in view of the fire accident. For these reasons, application is rejected.

2. Thus, DRAT found no urgency to take up the matter as there is no normal functioning of the Tribunal in view of the fire accident. It is however noticed that there was an auction sale conducted as far back as on 23/11/2011 and Auction Purchaser is in occupation of the secured asset for last more

than 7 years. This aspect appears to have been overlooked by DRAT inasmuch as it is observed in the impugned order of DRAT that there was no difficulty for the Petitioner-Bank to deliver back physical possession.

3. In the circumstances, we grant liberty to the Petitioner to mention the matter before DRAT for consideration of appropriate interim orders pending the Appeal. The parties are directed to maintain status-quo for a period of 3 weeks from today.

4. We are informed by the Respondent No.2 – Auction Purchaser that he has also filed an Appeal before DRAT against the order of DRT.

5. The Writ Petition to stand disposed of in the aforesaid terms.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)