

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1603 OF 2018
IN
WRIT PETITION (ST) NO.15297 OF 2018**

Sangita Jhunjunwala

.. Petitioner

V/s.

The State of Maharashtra Through Govt.
Pleader and Ors.

.. Respondents

Mr.Mathews Nedumpara i/b Ms.Preeti Damare for the applicant

Mr.A.A.Alaspurkar, A.G.P. for the respondent no.1

Mr.A.S.Ramesan for the respondent no.2

**CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.**

DATED : OCTOBER 11, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 The present Applicant filed Writ Petition (L) No.15297 of 2018 for various reliefs including challenging the notice under section 13(2) of the SARFAESI Act, 2002 issued by the Respondent bank, order passed by the learned Chief Metropolitan Magistrate, Esplanade Court, Mumbai in Case

No.479/SA/2016, Securitisation Application No.217 of 2018 pending before the Debts Recovery Tribunal-II, Mumbai. Applicant also seeks order of direction against the Respondent not to take physical possession of the Petitioner's property i.e. flat No.1001 and 1004 'A' Wing, Rushi Tower, Swami Samarth Nagar, Near Green Acre Tower, Andheri (West), Mumbai 400 0653 during the pendency of the proceeding before the Debts Recovery Tribunal-II. Prayer clauses (a) to (h) of this Writ Petition reads thus:

“(a) Rule may be issued;

(b) Notice may be issued to the Respondents;

(c) That this Hon'ble Court be pleased to issued Writ of Certiorari or any other writ, order or direction in the nature Writ of Certiorari calling for records and proceedings in the matter of (i) Notice u/s.13(2) issued by the Respondent Bank, (ii) Case No.479/SA/2016 before the Ld.Chief Metropolitan Magistrate, Esplanade Court, Mumbai (iii) Securitization Application No.217/18 before the D.R.T.-II, Mumbai & (iv) Interlocutory Application No.498/2018 and Interim Application No.736/2018 in S.A.No.217 of 2018 before the D.R.T.-II, Mumbai, and to appreciate the same;

(d) That this Hon'ble Court be pleased to issue Writ of Mandamus or any other writ, order or direction in the nature Writ of Mandamus directing the Respondents not to take physical possession of the Petitioner's property i.e. flat Nos.1001 & 1004, 'A' Wing, Rushi Tower, Swami Samarth Nagar, Near Green Acre Tower, Andheri (West), Mumbai - 400 053, during the pendency of the proceedings such as Interim Application No.217/2018 before the D.R.T.-II, Mumbai and F.I.R. No.226/2018 registered by

Oshiwara Police Station, Mumbai.

(e) That this Hon'ble Court be pleased to issue Writ of Prohibition or any other writ, order or direction in the nature Writ of Mandamus directing the Respondents not to take physical possession of Petitioner's property i.e. flat Nos.1001 & 1004, 'A' Wing, Rushi Tower, Swami Samarth Nagar, Near Green Acre Tower, Andheri (West), Mumbai - 400 053, during pendency of the proceedings such as Interim Application No.217/2018 before the D.R.T.-II, Mumbai and F.I.R. No.226/2018 registered by Oshiwara Police Station, Mumbai.

(f) Interim and ad-interim relief in terms of prayer clause (e) above be granted.

(g) Cost of the petition be provided for; and

(h) Such other and further reliefs as this Hon'ble Court may deem fit and proper be granted in the interest of justice."

3 In this Writ Petition, the Applicant original Petitioner preferred the Civil Application seeking direction against the Respondent to return to the Petitioner / Applicant original title deeds of Flat No.1001 & 1004, 'A' Wing, Rushi Tower, Swami Samarth Nagar, Near Green Acre Tower, Andheri (West), Mumbai - 400 053, upon the Applicant remitting the amount as claimed by the Respondent bank in notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 together with interest @ 9%.

4 The learned counsel for the Applicant submits that as per

section 13(8) of the said Act right to redemption is the Applicant's right. He submits that Applicant is ready and willing to repay the entire amount to the Respondent bank as per their notice under section 13(2) of the said Act together with 9% interest. He further submits that even the Applicant by his letter dated 09.01.2018 called upon the Respondent bank to accept the entire amount with interest to settle the present dispute. In support of this contention, he relies on paragraph 9 of the letter dated 09.01.2018 which reads thus:

“9. Thus under instructions and on behalf of my client I hereby instruct to you that if you really wants to co-operate my client to settle the account by sale of residential properties of my client then, you should provide inspection of original title deeds to my clients then, you should provide inspection of original title deeds to my clients and/or to indenting purchasers/buyers or to any person on my clients behalf within the period of 7 days or on any suitable day as fixed mutually by you both but not in more than 10 days from receipt of this notice and I further instruct you whatever losses in saleable price of above properties which will be compensated by you only for which only you are liable, failing which my clients have no alternative to knock the door of appropriate Court/Tribunal.”

5 The learned counsel for the Applicant submits that in view of these facts and as the Applicant is ready and willing to repay the entire amount to the Respondent bank and in view of section 13(8) of the said Act, Respondent bank may be directed to return all the original documents of the suit flat to the Petitioner Applicant.

6 On the other hand, the learned counsel for the Respondent bank submits that they filed their Affidavit-in-Reply dated 12.09.2018. He submits that after following due process of law, they already sold the suit property in e-auction held on 29.08.2018 and the highest bid was received of Rs.4.76 crores and the bidder is Sharenik Jain, s/o Sr.Roshanlal Jain. In support of this contention, advocate for the Respondent bank relies on paragraph 2 of their Affidavit-in-Reply dated 12.09.2018 which reads thus:

“2. At the outset I say and submit that the Petitioner is merely seeking time and to thwart all efforts taken by the Respondent No.1 in taking possession and sale of the mortgaged property. I say and submit that the Petitioners are approaching this Hon'ble Court by way of quorum hunting. I say and submit that the Petitioner has also filed a Writ Petition bearing (L) No.2025 of 2018, the second petition and this Hon'ble Court was passed a detailed order on 20th June, 2018 not only rejecting the ad-interim relief but also allowing the Respondent No.2 bank to take physical possession. I say that even Review Petition filed by the Petitioner of the said order was also rejected and directed the Registry on the Appellate Side to issue Show Cause Notice to the Petitioner Sangita Sanjay Jhunjhunwala as to why the action under Contempt of Court Act should not be taken against her for having committed breach of the Undertaking. I say and submit that this is sixth round of litigation by the Petitioner after losing all her efforts in this Hon'ble Court and the Hon'ble Debt Recovery Tribunal. I say and submit that the Petitioner not abiding the orders passed by this Hon'ble Court. I say and submit that the Petitioner, instead of challenging the order in Hon'ble DRAT, approached this Hon'ble Court by way of this Writ

Petition on the similar issues raised in other Writ Petition bearing (L) No.15297 of 2018 and in Hon'ble Debt Recovery Tribunal, which were rejected by the Hon'ble DRT. I say and submit that there is no merit in the Petition as all the allegations raised in this Petition and the other Petition are triable in nature and cannot be adjudicated in writ petition and hence this Hon'ble Court be pleased to dismiss the same. I say and submit that the secured assets i.e. the mortgage properties are sold in an e-auction held on 29.08.2018 and the highest bid received of Rs.4.76 crores and the bidder is Mr.Sharenik Jain s/o. Sr.Roshanlal Jain."

7 The learned counsel for the bank further submits that for similar reliefs, Applicant also preferred Writ Petition (L) No.2025 of 2018 in the High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction. He submits that in that Writ Petition the Applicant preferred Notice of Motion (L) No.532 of 2018 for possession of the suit property. He submits that the Applicant moved before this court for urgent reliefs in Notice of Motion (L) No.532 of 2018. He submits that this court declined to grant any ad-interim relief in favour of the Applicant. In support of this contention, the learned counsel for the Applicant relies on paragraph 4 and 5 of the order dated 29.08.2018 in Notice of Motion (L) No.532 of 2018 in Writ Petition (L) No.2025 of 2018 which reads thus:

"4 The learned counsel for the Petitioner submits that during the pendency of the present Writ Petition and Notice of Motion, this Hon'ble Court be pleased to grant ad-interim relief in terms of prayer clause (c) of Notice of Motion which reads thus:

"c. to grant an ad-interim mandatory and/or

prohibitory injunction in favour of the Applicant / Plaintiff and against the Respondents restraining the Respondents, its agents, servants and privies from in any manner interfering in respect of the residential premises of the Applicant/Plaintiff, which the Respondent bank falsely claims to be secured assets at its hands and in particular the paper publication dated 27.07.2018 putting Plaintiffs/Applicants residential premises for sale through E-Auction on 29.08.2018, including confirmation of the purported sale (E-Auction) which will be conducted on 29.08.2018 purportedly in favour of Auction Purchaser, in respect of the residential premises namely, Flat Nos.A-1001 and A-1004, Rushi Tower, Swami Samarth Nagar, Lokhandwala, Andheri (W), Mumbai - 53 pending final disposal of the instant Writ Petition.”

5 *It is to be noted that the learned counsel for the Respondent Bank submits that auction sale is already completed by them. In view of subsequent development, there is no question of granting any ad-interim relief at present. Even considering the order dated 26.03.2018 passed by this court in Writ Petition No.3776 of 2018 filed by the present petitioner, there is no question of granting any ad-interim relief at present.”*

8 The learned counsel for the Respondent bank submits that in view of subsequent development and as property is already sold in auction held on 29.08.2018, there is no question of entertaining the present Civil Application by which the Applicant is seeking writ against the bank for original documents in respect of the suit property.

9 The learned counsel for the Respondent bank submits that

pursuant to the e-auction dated 29.08.2018, confirmation of sale in favour of highest bidder on 12.09.2018, issuance of sale certificate dated 15.09.2018 and handing over all original documents to the e-auction purchaser along with possession of the suit property, nothing survives in the present Civil Application. Hence, Civil Application is required to be dismissed with costs.

10 We have heard both the sides at length. In the present Civil Application, Applicant is seeking direction against the bank to hand over the original title deeds of the suit property to the Applicant. It is to be noted that the said property was already sold by the bank in e-auction dated 29.08.2018. Same was confirmed on 12.09.2018 and sale certificate was issued in favour of the highest bidder on 15.09.2018. Apart from that, they already put the highest bidder in possession of the suit property. Not only that in earlier Notice of Motion (L) No.532 of 2018 in Writ Petition No.2025 of 2018, this court declined to grant any ad-interim relief in favour of the Applicant for possession of the suit property as stated in above.

11 In view of these facts, we do not find any substance in the present Civil Application. Hence, Civil Application stands rejected with costs of Rs.25,000/-.

12 Cost of Rs.25,000/- is imposed because the Applicant is preferring multiple Applications for the same cause of action.

13 Cost to be deposited in the office of the Kirtikar Law

Library, High Court, Bombay, within three weeks from today and place on record receipt to that effect.

14 If receipt is not placed on record within three weeks from today, Registry is directed to forward copy of this order to the concerned Collector to recover the said cost as arrears of land revenue under Maharashtra Land Revenue Code and deposit in the High Court Registry.

15 Thereafter, cost be remitted to the Kirtikar Law Library, High Court, Mumbai.

(SANDEEP K. SHINDE, J.) (K.K. TATED, J.)