

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2395 OF 2018
IN
WRIT PETITION NO.157 OF 2018

Janakalyan Sahakari Bank Ltd., Mumbai and Anr.	...	Applicants
<i>In the matter between</i>		
Premlaksaha R. Padubidri	...	Petitioner
<i>Vs.</i>		
State of Maharashtra, Through the Chief Secretary, Mantralaya, Mumbai and Ors.	...	Respondents

Ms. Sanchita Thakur, with Mr. Onkar Warange, for the Applicants.
Mr. A.P. Vanarase, A.G.P., for Respondent Nos.1, 3 and 5 to 8.

CORAM : K.K. TATED &
N.J. JAMADAR, J.J.

DATE : 21ST DECEMBER, 2018.

P.C. :

1. Heard learned counsel for the Applicants and learned A.G.P. for the Respondent-State. None appeared for the Petitioner, despite service of notice. Applicant-Creditor has filed an affidavit-of-service on 6th December 2018.

2. By this Civil Application, the Applicant-Creditor is seeking permission to proceed with the sale of the disputed property i.e. Row House No.12, Arinda Co-operative Housing Society Limited, Sector No.10, Vashi, Navi Mumbai, by following due process of law.

3. The learned counsel for the Applicant-Creditor submitted that, the original Petitioner had obtained the possession of the property, which was already taken over by the Tahasildar in pursuance of the order passed by the Executive Magistrate, by taking undue advantage of the status-quo order passed by this Court on 20th February 2018.

4. In the order dated 3rd May 2018 passed in Civil Application No.906 of 2018 in Writ Petition No.157 of 2018, this Court [*Coram : A.A. Sayed & Ravindra V. Ghuge, J.J.*], has recorded the sequence of events and came to the conclusion that, the possession of the property was already taken in deference to the order passed by the District Magistrate and by taking undue advantage of the order passed by this Court in the said Writ Petition, the Petitioner therein had broken open the lock and had forcibly re-entered the property. The Court was, thus, pleased to pass the following 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.

(iii) 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.”

5. The learned counsel for the Applicants submits that, in pursuance of the aforesaid order, the Applicant No.2 – the Special Recovery Officer has taken possession of the disputed property. However, clause (iv) of the aforesaid order directs that the Applicant-Bank shall continue to act as an agent of the said property, without royalty and security. It is submitted that the Applicant-Bank has to recover an amount in excess of Rs.2 Crores, which is due and outstanding in terms of the 'Recovery Certificate' issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960.

6. We have perused the material on record and heard the learned counsel for the Applicants at length. It is evident that, by taking undue advantage of the status-quo order passed by this Court, the Petitioner in the present Writ Petition tried to undo the position, which was in existence at the time of passing of the status-quo order. It would be contextually relevant to note that this Court [*Coram : A.A. Sayed & Ravindra V. Ghuge, J.J.*], has also issued notice to the Respondent Nos.1 and 2 [Petitioner in

Writ Petition No.157 of 2018 and Premlaksaha R. Padubidri] by order dated 3rd May 2018 in Contempt Petition No.158 of 2018 in Writ Petition No.157 of 2018.

7. The Applicant-Bank has to recover the outstanding dues in excess of Rs.2 Crores. In view thereof, there does not seem to be any restraint, which restrains the Applicant-Bank from proceeding with the recovery of the outstanding amount by following due process of law. Nor there is any justifiable reason to keep the Applicant-Creditor away from the fruits of the 'Recovery Certificate'.

8. In view of the above, we are of the view that the Applicant-Bank ought to be permitted to proceed with the recovery of its outstanding dues by following due process of law. Hence, we are inclined to allow this Civil Application and, accordingly, pass the following order :-

“O R D E R”

The Civil Application is allowed in terms of prayer clause (a), which reads as under :-

“This Hon'ble Court be pleased to permit / allow the Applicant to proceed with the recovery proceedings by sale of the property situated at Row House No.12, Arinda Co-operative

Housing Society Limited, Sector
10, Vashi, Navi Mumbai – 400 703,
by following due process of law.”

9. Civil Application stands disposed off in the above terms.

[N.J. JAMADAR, J.]

[K.K. TATED, J.]