

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

**CIVIL APPLICATION NO. 2198 OF 2018
IN
WRIT PETITION NO. 9928 OF 2018**

Srei Equipment Finance Pvt.Ltd., Paradise,
Mumbai.

... Applicant.
(Respondent)

In the matter of :

M/s. Accura Infotech Pvt., Ltd. & Anr.

... Petitioners.

V/s.

Srei Equipment Finance Pvt.Ltd., Paradise,

... Respondent.

Mr. J. P. Sen, Senior Counsel, a/w. Poonam Utekar, Advocate
i/by A.G. Pandit & Associates for the Applicant/ Respondent.

Mr. Manoj Harit, Advocate for the Petitioners.

(Mr. Suhas P. Sawant, Dy. Official Liquidator, is present.)

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

DATE : OCTOBER 16, 2018.

PC :

- 1 Heard learned counsel appearing for the parties.
- 2 Learned senior counsel, appearing on behalf of the Applicant, by this civil application, seeks direction against the Petitioners to hand over possession of the suit property i.e. Flat Nos. C/504 & 505, as described in prayer clause (b) of the present civil application. Learned counsel for the applicant submits that in present proceedings, initially, the petitioners filed writ petition no. 9928 of 2018 for various reliefs and

when this court declined to entertain said writ petition, the petitioners filed undertaking dated 04.09.2018 to the effect that they will hand over possession of the mortgaged assets to the Applicant, if they failed to get any protection from the Debt Recovery Appellate Tribunal within two weeks from the date of the order. He further submits that after two weeks, the applicant called upon the petitioners to comply with their undertaking by handing over the mortgaged property to the applicant. As the petitioners failed and neglected to do so, the Applicant preferred the present application to seek directions to the Senior Inspector of Police, Navi Mumbai, Police Station, to give police protection to the Applicant to take forcible possession of the suit property. He submits that as on today, the applicants have to recover more than Rs. 75 crores from the petitioners. He submits that if the present civil application is not allowed, irreparable loss would be caused to the applicant.

3 On the other hand, learned counsel appearing on behalf of the Petitioners vehemently opposed the present civil application. He submits that the applicant has already made an application before the learned Magistrate, for taking forcible possession of the suit property and hence, there is no question of allowing the present application filed by the applicant. He further submits that the matter is pending before the DRAT and also in the Apex Court and, therefore,

also there is no question of allowing the present application and the same requires to be dismissed with costs.

4 At this stage, learned counsel for the petitioners submits that he has received instructions from the client that they are ready and willing to pay the entire market value of the suit property to the applicant, if valuation is done through some valuer from the panel of this court and that to show their bonafides, the petitioners are ready and willing to deposit Rs.50,00,000/- with the Applicant. These facts are stated by the Petitioners Advocate orally and in writing also. The writing is taken on record and marked "X" for identification.

5 We have heard both the sides at length. It is to be noted that in the present proceedings, the applicants have to recover more than Rs.75 crores from the petitioners. Though the petitioners have given written undertaking before this court dated 04.09.2018, they failed and neglected to comply with the same. Therefore, there is no question of adjourning this matter on the basis of the submissions made by the learned counsel for the petitioners that they are ready to deposit Rs. 50,00,000/- lakhs with the applicant to show their bonafides.

6 As the petitioners have failed and neglected to comply with their undertaking dated 04.09.2018, we are satisfied that the Applicant has made out a case for allowing

this civil application in terms of prayer clause (b), which reads as under :

“(A) Direct the Senior Inspector of Police, Navi Mumbai Police Station/Nerul Police Station, to give police protection to the Applicant to take forcible possession of the said (1) Flat No. C/504, admeasuring approx. 728 Sq.Ft., and (2) Flat No. 505, admeasuring 1147 sq. ft., on the 5th floor in C-Wing of the Complex known as Shreeji Heights situate at Plot No.1,1A, 1B, 1C, Sector 46A, Nerul, Navi Mumbai, Dist. Thane at the earliest date deemed fit by this Hon'ble Court.”

(B) The concerned Senior Inspector of Police is directed to provide assistance to the Applicant to execute this order on payment of the usual charges.

(C) Parties to act on an authenticated copy of this order, duly certified by the Sheristedar.

(D) Civil Application is allowed in the above terms and stands disposed of accordingly.

(E) At this stage, the learned counsel for the petitioners seeks stay of this order. Considering the undertaking given by the petitioners, there is no question of stay. Hence, request of stay of this order is rejected.

(N.J. JAMADAR, J.)

(K. K. TATED, J.)

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