

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.35555/2018

M/s. Dixita Electrical Engineering Works ... Petitioner

V/s.

Raigad Sahakari Bank Ltd. & Ors. ... Respondents

Mr. Subhash Jha with Sanjana Pardeshi I/b. Law Global for the
Petitioner

Mr. Sanjay Anabhawale for the Respondents

Mr. Rajesh Sawant – Recovery Officer.

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

DATED : DECEMBER 19, 2018

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 14.11.2018 passed by the Chief Metropolitan Magistrate, Esplande Court, Mumbai below Exhibit-1 in Case No.132/SA/2018 permitting the Respondent Bank to take forcible possession of Flat No.C/12, on the 1st floor having area about 440 sq.ft. built up area in the building known as “Akshay Tara Cooperative Housing Socieity”, situated at Jeevan Vikas Kendra Road, Vile Parle (East), Mumbai – 400057.

2 After arguing for some time and after taking instructions from his client, the learned counsel for the Petitioner makes a statement that the Petitioner is ready and willing to pay sum of

Rs.25 lacs as stated by them in their affidavit cum undertaking dated 29.12.2018. Said affidavit is taken on record and marked "X" for identification.

3 The deponent Mr. Prakash Dahyalal Panchal entered into witness box. He admits the contents of the affidavit cum undertaking dated 19.12.2018.

4 The learned counsel for the Petitioner submits that the Petitioner is ready and willing to pay the following amounts to the Bank:

- a. Rs.10 lacs within a week from date of this order.
- b. Further Rs.10 lacs within four weeks thereafter.
- c. Remaining Rs.5 lacs within 6 months from the date of taking possession of the flat.
- d. The Petitioner is ready to occupy the flat on payment of Rs.20 lacs, as an Agent of the Bank.

He further submits that, if there is any delay on the part of the Petitioner to make the payment as stated hereinabove, the Petitioner has no objection for the Respondent Bank to dispose of the flat for recovery of their outstanding amount. He further submits that even if there is default of any installment, then also the Respondent Bank can dispose of the said property for recovery of their dues. In case it remains on the part of the Petitioner to hand over the possession of the said flat to the Bank, the Bank has right to take forcible possession of the said flat as per order dated 14.11.2018 passed by the Chief Metropolitan

Magistrate below Exhibit-1 in Case No.132/SA/2018 with the help of Police authority.

5 The learned counsel for the Respondent Bank, after taking instructions from Mr. Rajesh Sawant, recovery Officer of the Respondent Bank, who is present in court, makes a statement that the bank is ready and willing to allow the Petitioner to occupy said flat as their agent on receipt of Rs.20 lacs. He further submits that they will handover possession of the flat to the Petitioner as their agent within a week from the receipt of entire amount of Rs.20 lacs and execute an Agency Agreement to that effect. The statement is accepted.

6 In view of these facts, the petition stands disposed of in the following terms.

- a. The Petitioner to make payment as stated in the affidavit cum undertaking dated 19.12.2018 to the Respondent Bank.
- b. Once a sum of Rs.20 lacs is paid to the bank, the bank is directed to allow the Petitioner to occupy the said flat as an agent of the bank on execution of agency agreement without any royalty.
- c. Remaining sum of Rs.5 lacs shall be paid by the Petitioner to the Bank within six months from the date of receipt of possession, subject to any other order passed by the Court/ Authority to that effect in any proceedings taken out by the Petitioner.

- d. If there is any default on the part of the Petitioner to make the payment of the amount as stated hereinabove, the Respondent Bank is entitled to dispose of the property for recovery of their dues by following due process of law.
- e. Liberty granted to the parties to move this court, in case of difficulty.
- f. The Writ Petition stands disposed of accordingly.
- g. All contentions of the parties are kept open.
- h. Parties to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)