

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2369 OF 2018

Amit Babbar	.. Petitioner
Vs.	
ICICI Bank Ltd and ors.	.. Respondents

Ms.Maneesha Patel, for Petitioner.
Ms.Fatima Lakdawala-Kadri, for the Respondent No.1.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.
DATE : 25th JULY 2018**

P.C. :

. The limited prayer pressed by the learned Counsel for the Petitioner is prayer clause (2) which reads as follows:

“2. That the Hon'ble High Court be pleased to issue a Writ of Certiorari or Writ of in the nature of Certiorari or any appropriate Writ or Direction directing the Hon'ble Presiding Officer DRT II to hear the Securitisation Application No.157 of 2017 expeditiously in time bound manner.”

2. The learned Counsel for the Petitioner pointed out that the Petitioner is neither a borrower nor a guarantor. She submitted that the Petitioner purchased the Flat No.203 in

question by a registered Agreement for Sale dated 31 December 2010 which was executed between the borrowers - Respondent Nos.2 and 3 on the one hand and the Petitioner on the other hand and the said Agreement is duly registered. She submitted that the borrower - Respondent No.2 has played fraud with the Respondent No.1 Bank by obtaining loan on forged and bogus Agreement for Sale dated 3 October 2016 in respect of the said Flat No.203 by mortgaging the said flat. The learned Counsel pointed out that on the basis of this forged and bogus Agreement for Sale dated 3 October 2006, the borrower - Respondent No.2 had taken a loan from the Respondent No.1 Bank and the Respondent No.1 Bank had initiated proceedings under the SARFAESI Act and taken possession of the said Flat No.203 by dispossessing the Petitioner. The Petitioner has filed Securitisation Application No.157 of 2015 in DRT.

3 It appears that there are two registered Agreements for Sale in respect of the said flat No. 203. The first Agreement for Sale relied upon by the Petitioner in respect of the said Flat

No.203 is between Memun Ebrahim and Rizwan Ebrahim in favour of the Respondent No.2 – Nelson Menachery. This Agreement for Sale is dated 1 July 2005 which is in possession of the Petitioner. The other Agreement for Sale relied upon by the Respondent No.1 Bank is dated 3 October 2006 between the same parties and which is in possession of the Respondent No.1 Bank. In I.A. No.588 of 2017 in S.A. No.157 of 2017, the DRT passed an order directing Sub-Registrar of Assurance to file a Report as regards the genuineness of the said two Agreements. The Sub-Registrar of Assurance filed a Report dated 1 February 2018 stating that the Agreement for Sale dated 1 July 2005 (produced by the Petitioner) is a registered document. So far as the Agreement for Sale dated 3 October 2016 (produced by the Respondent No.1 Bank), is concerned, the Report states that the said document is not found in their records.

4. The learned Counsel for the Petitioner submitted that in view of the Report of the Sub-Registrar, it would be apparent that there is thus no security interest created in respect

of the said Flat No.203. Learned Counsel submitted that the Petitioner has been dispossessed from the said Flat No.203 despite there being no security interest in respect of the said Flat No.203 in favour of the Respondent No.1 Bank. She submitted that the Petitioner was residing in the said Flat No.203 for more than seven years when he was dispossessed and he is now required to stay in a flat which is taken on leave and license for which he is paying a sum of Rs.30,000/- per month. The learned Counsel submitted that the Securitisation Application of the Petitioner is required to be heard expeditiously and that because of the fire that had broken out in the building where DRT is housed, DRT is now taking only urgent matters and resultantly, the Securitisation Application of the Petitioner is not being heard.

5. Considering the facts and circumstances of the case, we only grant liberty to the Petitioner to mention the matter before DRT to hear and dispose of the SA No.157 of 2017 expeditiously, which request may be considered by the DRT

sympathetically and the SA be heard and disposed of as per its convenience.

6. With the aforesaid directions, the Writ Petition is disposed of.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)