

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 5992 OF 2019

Axis Bank Ltd.

.. Petitioner

Vs.

Union of India & Ors.

.. Respondents

Mr. Chetan C. Agrawal for the Petitioner.

Mr. J. B. Mishra for Respondent No.1.

Mr. Sameer Khedekar i/b Yogesh Sankpal for Respondent No.2.

Ms. Jyoti Agrawal for Respondent Nos.3 & 4.

Mr. Abhineet N. Pange for Respondent Nos.5 & 6.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 6th NOVEMBER, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. M/s. Land Marine Equipment Services Pvt. Ltd., Mr. Hiranmoy Bhattacharya, Ms. Lipi Bhattacharya and Mr. Vikas Benke (not impleaded as Respondent) were proceeded against under SARFAESI. The secured assets were Flat No. 203, 2nd Floor, 'C' Wing, Sai Swar Co-op. Housing Society, Plot No.20, Sector 2, Kharghar, Taluka-Panvel, District-Raigad, Navi Mumbai, Shop No. 18, Ground Floor, Shelter Complex, Plot No. 12B, Sector 8, Kharghar, Taluka-Panvel, District-Raigad, land bearing CTS No.18, 18/1 to 14, village Mogra, Taluka-Andheri. Enforcing the right under the indenture of security, Axis Bank attached and sold Flat No.203. R-3 and R-4 were the auction purchaser

and have paid the bid amount in a sum of ₹ 82,75,000/-. The dues of the bank were more than that. On account of service tax liability fastened upon M/s. Land Marine Equipment Services Pvt. Ltd., the Union of India wrote a letter to the Co-operative Society not to accept transfer of membership of the share certificate in the name of the auction purchasers. Based on said letter, the Society (R-2) refused to transfer the share certificate in respect of flat and prohibited Respondent Nos.3 and 4 from even parking their own car in the society complex. Prayer made in the Writ Petition filed by Axis Bank is to issue a mandamus to Respondent Nos.2 to issue the necessary no objection certificate.

3. Learned Counsel for the Bank and Union of India do not dispute that the right of the secured creditor is above the right of the Union of India in respect of the lien on the flat in question.

4. Thus we disposed of the Petition declaring that the auction purchasers have an absolute right qua Flat No.203, Sai Swar Co-operative Housing Society and issue mandamus to the society to register the transfer of membership in the names of Respondent Nos.3 and 4.

5. Needless to state with respect to the other secured assets, Union of India needs to sort out the issue with the bank so that all secured assets are sold and after appropriating the dues by the bank if there is surplus, the same to be paid over to the Union of India.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
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