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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2384 OF 2019

Madhoor P. Kotak & Anr. ... Petitioners
Vs.
Greater Bombay Co-Op. Bank Ltd. & Ors. ... Respondents

Mr. Subhash Jha, Hare Krishna a/w Ms. Divya i/b Law Global, for the Petitioners.

Mr. Harish R. Pawar, for Respondent Nos. 1 & 6.

Mr. H. S. Murthy a/w Dep Chheda a/w Rima Oke i/b Abishek Patil, for Respondent No. 5.

Mrs. S. S. Bhende, AGP for the Respondent – State.

Mr. Durgesh Kulkarni, Assistant Manager (Lega) of Respondent No. 1 Bank.

**CORAM : INDRAJIT MAHANTY, &
SARANG V. KOTWAL, JJ.**

DATE : FEBRUARY 28, 2019

PC :

1. Mr. Harish Pawar appearing for Respondent No. 1 (bank) and Respondent No. 6 (recovery officer), on instruction of Mr. Kulkarni, Assistant Manager of Respondent No. 1 who is present in Court, submits that Respondent Nos. 1 and 6 took action against Flat No. 301/A since the record of the Society continue to be in the name of the judgment debtor. Learned counsel for the Petitioners fairly admits that the records of the Society has not yet been mutated in the name of the Petitioners. The learned counsel

appearing for Respondent No. 5 Bank, who have financed the Petitioners to purchase two flats i.e. Flat Nos. 301/A and 301-A/A, submits that the original documents pertaining to the said flats have been placed in favour of Respondent No. 5 and are physically in their possession.

2. The learned counsel appearing for Respondent Nos. 1 and 6 fairly submits that the Bank had taken action in respect of flat No. 301/A since the same stood in the name of the original judgment debtor, as revealed from the Society's record, but after going through copy of the petition, served on him, the Bank has realised that they have taken erroneous action against the Petitioners, for which reason they are ready to hand over back possession of flat No. 301/A in favour of the Petitioners at the earliest. The learned counsel further submits that the recovery officer who has effected such seizure is not available today in Mumbai, but he is ready for redelivery of the possession of the flat to the Petitioners and withdraw the order of attachment. After taking into consideration the submissions made on behalf of Respondent Nos. 1 and 6, we proceed to pass the following order.

ORDER

- (i) Respondent No. 6 is directed to hand over possession as well as withdraw the order of attachment of flats on or before 6th March, 2019.

- (ii) We record our appreciations to the submissions advanced on behalf of Respondent Nos. 1 and 6, which has assisted us in concluding the proceeding at the very threshold.
- (iii) The writ petition is disposed of in the aforesaid terms.
- (iv) Parties to act on an authenticated copy of this order.

Sd/-
[SARANG V. KOTWAL, J.]

Sd/-
[INDRAJIT MAHANTY, J.]

Vinayak Halemath