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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7306 OF 2019

HDB Financial Services Limited .. Petitioner
Vs.
Jaiprakash Strips Limited & Ors. .. Respondents

Ms. Saakshi Saboo i/by Raval – Shah & Co. for Petitioner.
Mr. R. S. Joshi i/by Mr. G. S. Gorwadkar for Respondent No.5.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

NOVEMBER 13, 2019.

P.C.

1. Heard learned Counsel for the parties.
2. The Petitioner is a financial institution and advanced a loan in sum of ₹ 1.5 Crores to the first Respondent and *inter alia* obtained benefit of a mortgaged to it of property popularly known as Nikunj Bungalow, Plot Nos.26 & 27, Saubhagya Nagar, Lam Road, Nashik Road, Vihitgaon Shiwar, Nashik. In the Deed of Hypothecation no negative covenant has been stipulated, in any case none has been brought to our notice, retraining the owner of the mortgaged property from leasing or by way of a leave and license putting a third party in possession of the same. The only negative covenant is not to create any charge or encumbrance or security interest over or on the secured property.

3. The owner of the property, under a Leave and License Agreement, inducted Respondent No.5 in the property in question for a period of 60 months commencing from 1st August, 2016 till 31st July, 2021.

4. Thus, while enforcing the security the Petitioner has to inform the prospective buyer that the 5th Respondent has a right to be in possession of the property for the duration in term of the Leave and License Agreement dated 3rd December, 2016.

5. Challenge in the Petition is to the orders passed by the learned Civil Judge, Senior Division, Nashik restraining the sale of the property.

6. We dispose of the Petition setting aside the impugned orders which prohibit sale of the secured assets, but clarify that while selling the secured assets the prospective buyer would be informed of the possessory rights in favour of the Respondent No.5; to occupy the property under the Leave and License Agreement dated 3rd December, 2016 till 31st July, 2021.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE