

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 2792 OF 2018

Mrs. Sarita Hansel Mathias

.. Petitioner

Vs.

Mr. Hansel Henry Mathias & Anr.

.. Respondents

Ms. Swati Khatri for the Petitioner.

Ms. Susan Abraham and Mr. Narayana B. Suvarne for Respondent No.1.

Mr. Arsh Mishra i/b M. V. Kini & Co. for Respondent No.2.

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

DATE : 4th NOVEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. Undisputed position is that the Petitioner and the Respondent, who are wife and husband, obtained a housing loan from the 2nd Respondent to purchase a flat No. B-3/301, Ashok Towers, Off Military Road, Marol, Andheri (E), Mumbai-72. Both of them are co-borrowers. Unfortunately, the husband and wife are in litigation. The wife claims that orders passed in her favour in matrimonial proceeding requiring the husband to pay maintenance to her are not being honoured by the husband. Challenge in the Writ Petition is to action initiated by the 2nd Respondent under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
3. Regretful for the parties neither responded to the notice issued by

the 2nd Respondent under Section 13(2) of the Act. Neither proceeded to challenge the decision of the bank by filing an Appeal contemplated by Section 17 of the Act.

4. At the stage when the bank obtained an order under Section 14 of the Act instant Petition was filed by the wife.

5. The arguments of the Petitioner are centering upon the husband's liability to pay her maintenance and that flat in question is the only place where the Petitioner can reside with her daughter.

6. This would be no defence to the action of the bank.

7. It is for the husband and wife to put their heads together to ensure that the dues of the bank are clear.

8. Suffice it to state that the remedy of the Petitioner is to proceed under Section 17 of the Act.

9. Thus, the Petition is dismissed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]