

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6593 of 2019**

Firoz Jamal Khan	Petitioner
versus	
Thane Bharat Sahakari Bank Ltd. and ors.	Respondents

Mr. Nimay Dave along with Ms.Sakshi Saboo i/b. Mr. Raval Shah,
advocate for the petitioner.

Mr. Ashish Kamat along with Ms.Jyoti Sanap i/b.M. V. Deshpande and
Co., advocates for respondent Nos.1 and 2.

Mr. Sanjeev Sambasivan i/b. Phoenix Legal, advocates for respondent
Nos.7 & 8.

Mrs. M. P. Thakur, AGP for the State.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 18th JULY, 2019.

P. C. :

Learned counsel for the petitioner seeks permission of this Court to withdraw this petition. We are inclined to allowed the said prayer made by learned counsel for the petitioner but we would also like to make an observation in respect of the manner in which this Court was taken for a ride when a statement was made before us on 10th June, 2019 by Mr.Nedumpura, learned counsel for the petitioner. On 10th June, 2019, when the matter was heard by us, learned counsel appearing for the petitioner in the matter, at the outset, made a statement that the balance amount of Rs.1.90 crores towards purchase price of the subject flat would

be deposited by the petitioner in this Court on or before 17th June, 2019. We accepted the solemn statement made by the learned counsel for the petitioner and though Mr. Kamat, learned counsel for the respondent made a statement that possession of the subject flat is already taken, in the light of the statement of the learned counsel for the petitioner across the Bar, we ordered maintenance of status-quo regarding possession of the subject flat as at 3.30 p.m. till the next date of hearing.

2. Undisputedly, the amount which was undertaken to be deposited was never deposited before the returnable date. Today, Mr. Dave, learned counsel has put his appearance on behalf of the petitioner and he invited our attention to an affidavit sworn on 15th June, 2019 by one Sanial Sudam Pange seeking modification of order dated 10th June, 2019. In the said affidavit, a categorical statement is made in paragraphs 6 and 7 to the following effect :

“6. I state that in view of the fact that the Petitioners are awaiting the disbursal of the loan for the said amount, they were never in a position to instruct the Counsel to make any such statement for deposit or give any assurance of depositing any amounts whatsoever before this Hon’ble Court which has been submitted by the Counsel without permission or specific instructions being sought from the Petitioners.

7. *I state that, as recorded in the paragraph 3 of the Order, the Respondent no.1 is now in possession of the Flat and the directions with respect to maintaining status quo as on 3.30 pm. on June 10, 2019 need not be modified in any other manner, except the statements in paragraph 1 of the Order, as the same will not be prejudicial to the Respondent No.1 in any manner whatsoever."*

3. The contents of the said affidavit makes the picture very clear and we are constrained to observe that learned counsel was not instructed by the petitioner to make such a statement. In any contingency, we observe nothing more except we deprecate the said practice. We allow the petitioner to withdraw the petition and make no order as to costs.

4. Needless to say that the order passed by us on 10th June, 2019, stands vacated.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]