

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.19525 OF 2019

Harvinder Singh Vijan

Petitioner

versus

Union of India and others

Respondents

Adv.Sonal Parab, Adv.Rajeev Sawant, Adv.Uzair Kazi and Jashoa D'Souza I/by Adv.Yogendra Kanchan for Petitioner.

Mr.Mohammad Ali Chunawala for respondent no.1.

Adv.Kainaz Irani with Ravi Goenka I/by Goenka Law Associates for respondent no.2.

Adv.Ismail Nasikwala with Dilkash Balsara I/by Chandrika Prajapati for respondent nos.3 and 4.

CORAM : A.A.SAYED AND
PRAKASH D. NAIK, JJ.

DATE : 19th July 2019

PC :

1. The order impugned in this Petition is order dated 9th July 2019 passed by DRAT, Mumbai. What was challenged before the DRAT was an order dated 16th April 2019 of the DRT dismissing I.A.No.384 of 2019 in S.A.No.569 of 2018 filed by the Petitioner seeking the relief of status-quo in respect of the flat in question occupied by Petitioner. The DRAT by the impugned order has not granted any protection to the Petitioner and disposed of the Appeal. In paragraphs 5 and 6 the DRAT has observed as follows :

“5. After hearing both sides, it is clear that S.A. is still pending and main objection raised by other side in the S.A. about locus-standi of the appellant and maintainability of the S.A. Therefore without going into the correctness of the order dated 16/04/2019, I deem it appropriate to direct both parties to get ready in the main

S.A so that their rights can be resolved finally. In fact inquiry under Section 17 itself is a summary inquiry within time bound manner and there is no provision in the Act providing any interim application or interim relief to be claimed in S.A. As the appellant is apprehending that he may be dispossessed, I deem it appropriate to direct the Tribunal below to dispose of the S.A as expeditiously as possible preferably within one month from the date of receipt of the order.

6. *Appeal is disposed of accordingly.”*

2. Respondent no.3 is the owner of the flat in question viz Flat No.1701, situated on 17th floor, Kritika Tower, Sion Trombay Road, Near R.K.Studio, Chembur, Mumbai-400 071 (hereinafter referred to as 'the said flat'). The Respondent no.3-borrower had availed certain financial assistance from the Respondent-Bank against equitable mortgage of the said flat sometime in the year 2009. It is admitted position that the wife of the Petitioner had entered into a Leave and Licence Agreement with Respondent no.3-borrower in the year 2011 in respect of the flat in question. The said Agreement expired in the year 2016. The Petitioner claims to have entered into an oral Agreement in the year 2013 with Respondent no.3-borrower for purchase of the said flat. According to the Petitioner, under the oral Agreement for purchase of the said flat, the Petitioner has already paid an amount of Rs.1,63,00,000/-. It is, however, pertinent to note that the entire amount is claimed to have been paid in cash. It is not in dispute that the mortgage created in favour of Respondent-Bank by Respondent no.3-borrower, was in the year 2009 which is prior to the Leave and Licence Agreement of 2011 and alleged oral Agreement of the year 2013. The possession of the said flat which is a secured asset of the Respondent-Bank, is scheduled to be taken today i.e. 19th July 2019.

3. It is pointed out on behalf of the Respondent nos.3 and 4 (the Power of Attorney holder of Respondent no.3) that though the impugned order of DRAT has been passed directing the DRT to decide the SA within one month, it may not be possible for DRT to do so, as presently the concerned DRT is vacant and in-charge DRT is overburdened and sitting till 10.00/11.00 pm and mostly deciding interim applications only due to paucity of time.

4. Since it is an admitted position that the mortgage was prior to the oral Agreement and the Leave and Licence Agreement, the Petitioner would not have any right to obstruct the Respondent-Bank from taking possession of the said flat which is a secured asset of the Respondent-Bank. We informed the learned Counsel for the Petitioner that if the Petitioner gives an Undertaking to vacate the secured asset/said flat within one week, we would be inclined to grant time to the Petitioner to vacate the said flat. However, learned Counsel for the Petitioner, on instructions, stated that the Court may pass appropriate orders.

5. In the facts and circumstances of the case, we are not inclined to interfere with the impugned order of DRAT and grant any protective orders to the Petitioner. We, however, direct that in the event physical possession is taken over by the Respondent-Bank, no further steps shall be taken by the Respondent-Bank until disposal of the S.A.

6. Subject to the above, the Petition is dismissed.

7. We make it clear that the observations in this order shall not come in the way of parties while deciding the SA or civil/criminal proceedings pending between them.

8. Learned counsel for Petitioner seeks stay of this order. We are not inclined to grant stay as we are not satisfied on what basis the Petitioner can obstruct physical possession of the said flat being taken by the Respondent-Bank when the mortgage was admittedly prior to the Leave and Licence Agreement as well as alleged oral Agreement. The request for stay is rejected.

(PRAKASH D. NAIK, J.)

(A.A.SAYED, J.)

MST