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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12544 OF 2017

Rajkumar L. Pahuja

.. Petitioner

Vs.

City Bank N. A. & Ors.

.. Respondents

Mr. Sandeep Maurya for Petitioner.

Mr. Rakesh Singh i/by M. V. Kini & Co. for Respondent No.1.

Mr. Krishnanand Mishra i/by Akhilesh Singh for Respondent No.2.

Mr. Ajaykumar Rai a/w Krishnanand Mishra for Respondent No.3.

Mr. D. N. Kher, Court Receiver and P. K. Nardele, Officer on Special Duty, present.

Mr. Anand Agaskar, Officer of City Bank present.

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

DECEMBER 05, 2019.

P.C.

1. Heard learned Counsel for the parties on the express understanding that pleadings of the newly impleaded respondent Nos.2 and 3 in their applications be considered.

2. Late Mr. Lalchand B. Pajuja was admittedly the owner of a Flat bearing No. 801, 8th Floor, Jasmine Apartment CHS, Mistry Building, Dadasaheb Phalke Road, Dadar (East), Mumbai 400 014 and this fact is not in dispute. It is admitted by the Petitioner Rajkumar Pahuja that his brother Deepak Pahuja, impleaded as Respondent No.2 today and sister Komal, impleaded as Respondent No.3 today.

3. The writ petition lays a challenge to the order dated 19.09.2017 passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai in proceedings under Section 14 of the SARFAESI Act, 2002 appointing the learned Assistant Registrar, Dadar Center of Courts, Mumbai to take possession of the flat and sell the same to realize the dues of the first Respondent – Bank.

4. The order proceeds on the basis that notwithstanding the dispute between the family members, the flat in question mortgaged as security to the Bank by Deepak Pahuja and mother Mohini needs to be sold.

5. On what basis the Bank accepted the flat as a security

with authorization from Deepak Pahuja and Mohini to mortgage the same is not surfacing from the record and the learned counsel for the first Respondent-Bank is unable to throw any light thereon.

6. From the truncated material on record the position which emerges, and for which the common stand of the parties, is that late Lalchand B. Pahuja was the owner of the flat in question. He died intestate on 15.09.1982. This is also the admitted case of the parties. He was survived by his wife Mohini, two sons Rajkumar and Deepak and a daughter Komal.

7. A settlement took place on 25.07.1987 and case of Komal pleaded in Civil Application No. 327 of 2019 is that she signed the settlement so that peace and harmony could be maintained. Though she was entitled to 1/4th share in the flat in question, she agreed to take none resulting in the settlement declaring that the wife and two sons of late Lalchand B. Pahuja would have 1/3rd share each in the flat.

8. As per sister Komal, as pleaded in her application, the consideration by her to relinquish her 1/4th share in the flat was peace and harmony and if her brothers and her mother did not reciprocate peace and harmony, she would be entitled to her share

in the flat.

9. Marching ahead with the narration of the facts, we find that Rajkumar had to file a Suit for declaration and injunction based on the family settlement as he feared dispossession from his brother and the suit came to be disposed of on 30.11.2012 declaring the two brothers and the mother to be 1/3rd owner of the flat.

10. In Appeal filed before this Court, the dispute was resolved on 25.02.1999 as per which it was agreed that mother Mohini would be entitled to sell the flat. She would pay ₹ 14 lakhs to Rajkumar and would settle the claim of Rajkumar. It is obvious that mother and Deepak constituted a moiety for the reason *inter se* the two, how the mother settled the claim of Deepak has not been decided.

11. The position therefore would be that Rajkumar's 1/3rd share in the flat stands. The mother has not satisfied his share by paying to him ₹ 14 lakhs in terms of the consent decree dated 25.02.1999.

12. We fail to understand as to on what basis the Bank

agreed for the flat in its entirety to be offered as a security for the credit availed by Deepak and the mother of the parties i.e. Mohini. At best, 2/3rd undivided share in the flat could have been possibly offered as the security and unless the Bank got a decree of partition it could not have sold the flat in satisfaction of its dues.

13. Realizing that the only way forward was to sell the flat and pay to the Petitioner his 1/3rd share and the remainder to be appropriated by the Bank for the reason the other brother and the mother are co-borrowers, this court by consent appointed the Court Receiver to take possession of the flat and sell the same.

14. Unfortunately, not a single bidder has come forward.

15. The reason why there is no bidder is that the building in which the flat in question is situated is so dilapidated that nobody would buy the same. A buyer would then land-up with a dilapidated flat in a dilapidated building which would warrant re-development and history of cases in this court shows that re-development project land-up in litigation.

16. What is the way forward?

17. The simple way forward is to terminate the proceedings in the instant writ petition quashing the impugned order dated 19.09.2017 and restoring status quo ante as it existed when the writ petition was filed. The consent terms if the Court Receiver is unable to sell the flat being Clause 13 of the consent terms would come into play, which reads as under :-

“13. The parties agree that in case if the Learned Court Receiver is unable to sell “the Terrace Flat” within the period/ extended period, as specified in Clause 6, as aforesaid, the Learned Court Receiver shall immediately, re-hand over the possession of the terrace, to the Petitioner, to the extent as taken from him, as aforesaid. The parties further agree and undertake to this Hon’ble Court that the Learned Court Receiver shall continue to be in possession of the flat and the terrace i.e. to the extent as handed over by the Petitioner’s brother, as aforesaid, and that the Petitioner shall be handed over the possession of the portion of the flat, by the Learned Court Receiver, as per order dated 18-9-2017, passed in Appeal from Order bearing No. 504 of 2017, as aforesaid, subject to re-handing over the possession of the portion of the flat, as

shall be obtained under the said order, to the Learned Court Receiver, as and when the sale of the terrace flat takes place.”

18. The issues raised by Deepak Pahuja and the sister of the parties i.e. Komal cannot be adjudicated in the present proceedings. Regards Deepak Pahuja, we have repeatedly asked his Counsel as to on what basis he claims entitlement to the entire flat. Counsel simply states that Deepak Pahuja has 1/3rd share in the flat. As regards Komal, we cannot decide her claim as raised in the Civil Application filed by her. If she wants a right in the flat she has to challenge the Deed of Settlement executed on 25.07.1987.

19. We direct the Court Receiver to comply with Clause 13 of the Consent Terms/Minutes of Order dated 12.07.2018.

20. Reports Nos.50 and 194 of 2019 filed by the Court Receiver are disposed of.

21. The Bank shall pay such money as is payable and demanded by the Court Receiver.

22. Writ Petition is disposed of

Pravin D.
Pandit

Digitally signed
by Pravin D.
Pandit
Date: 2019.12.06
09:54:12 +0530

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE