IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 13446 OF 2018

Hemal Harshad Doshi & Anr. .. Petitioners
Vs.
Punjab National Bank & Ors. .. Respondents

Mr. Ali Patel i/b Mr. Jamshed Ansari for the Petitioners.
Ms. Sarita Nangare i/b Law Foucus for Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 4th NOVEMBER, 2019.

P. C. :

1. Heard learned Counsel for the parties.

2. The facts are interesting. Row House No. 28/7, Powai Chowk, Mulund Colony, Mumbai is the subject matter of the dispute. As per 1st Respondent-Bank, Respondent No.4 mortaged the same to it on 18.04.2011. As per the Writ Petitioners, they purchased the row-house in question from Respondent Nos.2 and 3 under a Deed of Conveyance dated 29.11.2007 which could not be registered on account of issue whether the plot of land on which the row-house was constructed was private forest land. The matter reached the highest Court and in the year 2013 the Sub-Registrar started accepting the conveyance deeds for being registered.

3. There is no clarity as to who was the original builder of the row-house but it appears from the pleadings that Respondent No.4

purchased the row-house and so did the Writ Petitioners. Be that as it may, we need not to decide the said issue of title.

4. The Petitioners are in possession of the row-house in question pursuant to unregistered Conveyance Deed dated 29.12.2007 and thus as per the Explanation (II) to Section 3 of the Transfer of Property Act, 1882 the bank would be deemed to have noticed of the possessory title of the Petitioners who would also be entitled to the benefit of Section 53-A of the Transfer of Property Act, 1882.

5. The Petitioners are aggrieved by an order obtained by the bank under Section 14 of the SARFAESI Act which has been passed without notice to the Petitioners.

6. Since the Petitioners do not have a registered Conveyance Deed in their favour, they would at best be entitled to the benefit of Section 53-B of the Transfer of Property Act, 1882 with a deemed notice to the bank of their possessory title.

7. Thus, the sale of the property by the bank would be subject to the rights of the Petitioners.

8. So declaring, we dispose of the Petition.

[SMT. BHARATI DANGRE, J.] [CHIEF JUSTICE]