

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.29897 OF 2019

Dipti widow of late Jatin Thakkar & Ors.	..Petitioners
Versus	
Canara Bank & Ors.	..Respondents

Mr. Mathew Nedumpara i/by Ms. Rohini Amin, Advocate for the Petitioners.

Mr. Charles D'Souza i/by Ms. Vaishali Bhilare, Mr. Niranjana Tiwari & Ms. Pavitra Manesh, Advocates for Respondent Nos.3 & 4.

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

P.C.

1] Heard learned counsel for the Petitioners and the contesting Respondents being Respondent Nos.3 and 4 who are the assignees of the debts from Respondent Nos.1 and 2 respectively.

2] The Petitioners challenge the order dated 19.11.2019 passed by the learned Additional Chief Metropolitan Magistrate, Mumbai under Section 14 of the SARFAESI Act, 2002 appointing the Assistant Registrar of the Kurla Court to take physical possession of the three flats detailed in the order dated 19.11.2019.

3] The Petitioners are the legal heirs of late Shri. Jatin Thakkar who died on 18.04.2018.

4] Late Shri. Jain Thakkar had filed an SA under Section 17 of SARFAESI Act, 2002 which was registered as No.35 of 2013 before DRT- Mumbai. On Transfer Petition (Civil) No.1600 of 2016 jointly filed by Respondent Nos.3 and 4 before the Supreme Court vide order dated 12.07.2017, SA No.35 of 2013 filed by late Shri. Jatin Thakkar was transferred to DRT-II, Ahmedabad.

5] It is the case of the Petitioners that late Shri. Jatin Thakkar was terminally ill and could not look after his personal affairs and that the order dated 12.07.2017 passed by the Supreme Court shows that he did not appear even before the Supreme Court. Thus, the Petitioners state that late Shri. Jatin Thakkar could not appear before the DRT at Ahmedabad before which the SA filed by him got listed after transfer on 27.11.2017 and thereafter on 21.02.2018.

6] On 21.02.2018 holding that the Securitisation Application was filed beyond the period of limitation but not terminating the order on said line of reasoning, the Securitisation Application was dismissed for default and want of prosecution vide order dated 21.02.2018.

7] The Writ Petitioners as the legal heirs of late Shri. Jatin Thakkar have filed a Miscellaneous Application before the DRT at Ahmedabad praying that the order dated 21.02.2018 be recalled and the Securitisation Application filed by late Shri. Jatin Thakkar be restored.

8] The said application is pending.

9] In the interregnum, Respondent Nos.3 and 4 have obtained the impugned order dated 19.11.2019.

10] As per the impugned order dated 19.11.2019 passed by the Additional Chief Metropolitan Magistrate, Mumbai, the Assistant Registrar has been appointed as the Commissioner to take physical possession of the three flats and to report compliance within 90 days from the receipt of the writ of commission.

11] Concededly, the Court Commissioner has not notified the date when he would proceed to take possession of the three flats.

12] Thus, we dispose of the Writ Petition directing the Petitioners to file a Miscellaneous Application before the DRT at Ahmedabad before which the application has been filed by them seeking recall of the order dated 21.02.2018. The application would pray to the DRT to stay the order dated 19.11.2019. The application would be filed within three weeks and would be heard by learned DRT at Ahmedabad within a week thereafter. We take on record the statement made by learned counsel for the Respondent Nos.3 and 4 that the Court Commissioner would not execute the impugned order dated 19.11.2019 till four weeks expires reckoned from today.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2019.12.05
17:35:16 +0530

SMT. BHARATI DANGRE, J

CHIEF JUSTICE