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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO. 30202 OF 2019

Karuna Rajkumar Tripathi

.. Petitioner

Versus

State Bank of India & Ors.

.. Respondents

Mr. K. R. Tiwari a/w Ms. Sushma Keny a/w Mr. Sarvesh Mishra i/
by K. R. Tiwari & Co. for Petitioner.

Mr. Vivek S. Sawant a/w Durga S. Soni for Respondent No.1-
Bank.

Ms. Manjula Rao i/by Mr. Ajinkya Udane for Respondent No.3.

Ms. Karuna Rajkumar Tripathi, Petitioner in person, present in
court.

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

DECEMBER 20, 2019.

P.C.

1. While issuing a notice in the Writ Petition we had
passed the following order :-

“1. The Petitioner (a homemaker) is the co-

borrower and resides in Flat No. A-1506, Fountain Heights, Lokhandwala Township, Kandivali (E), Mumbai-400 101. She has three minor daughters. Her husband: 3rd Respondent, was paying EMIs to the 1st Respondent-bank.

2. The flat in question would be the matrimonial house of the Petitioner and thus unless the husband provides alternative roof to the Petitioner, her minor daughters she should not be dispossessed from the flat in question.

3. Issue notice to R-1 and R-3 who would be the contesting Respondents. The notice is made returnable for 20.12.2019 and we permit the notice to be served through Registered A.D. Post as also e-mail.

4. Till the present order is vacated or modified, Respondent Nos.1 & 2 would take no further steps pursuant to the notice dated 15.11.2019 issued by the 2nd Respondent or pursuant to any other notice which may have issued. The Senior Inspector of Police, Samta Nagar, Kandivali shall ensure that the Petitioner is not dispossessed from Flat No.A-1506, Fountain Heights, Lokhandwala Township, Kandivali (E), Mumbai-400 101.”

2. Replies filed by the Respondent Nos.1 and 3 are taken on record.

3. Things are not as innocent as were projected by the Petitioner.

4. The reply filed by the husband brings out that due to recession in the market he lost his job as Manager with ICICI Bank and for said reason, after servicing the home loan for over five years paying EMI of Rs.92,065/- per month, he defaulted. The husband has purchased a 2 BHK flat in Bengal Sapurji Complex, New Town, Kolkata in the single name of the Petitioner. The husband has also ensured admission of the children born to the couple in Kolkata. The reply filed by the husband informs that the Petitioner has withdrawn ₹ 40 lakhs from a joint overdraft home loan account on 31.12.2015. The Petitioner who is present in person states that she has invested ₹ 35 lakhs out of the said amount in Fixed Deposits in the name of her children.

5. Default in the home loan being admitted and the husband having filed an affidavit on oath committing himself to bear the expenses for relocation of the Petitioner and the children born to the couple to Kolkata and there being a 2 BHK flat at Kolkata in the name of the Petitioner, we dismiss the instant writ petition but defer execution of the order dated 13.08.2019 passed by the Chief Metropolitan Magistrate, Mumbai under Section 14 of the SARFAESI Act, 2002 till 30.04.2020.

6. The deferment is on account of the fact that the children born to the couple should not be uprooted from the schools mid session and additionally for the reason it may be difficult for the children to be admitted in a school in Kolkata at this time of the year.

7. The Petitioner would hand over vacant physical possession of Flat No.1506, 15th Floor, “A” Wing, Building No.15, Fountain Heights, Sub Plot C, Sector No.II, Village Akurli, Kandivali (East), Mumbai 400 101 together with car parking space which is the secured asset on a date notified to her by the Court Commissioner appointed which would be any date post 30.04.2020.

Pravin D.
Pandit

Digitally signed by
Pravin D. Pandit
Date: 2019.12.20
16:28:34 +0530

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE