

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.488 OF 2019

IN

WRIT PETITION (ST) NO.34257 OF 2018

Deccan Merchants Co-op. Bank Ltd. & Anr. ... **Applicants.**

In the Matter in Between :

Vivek Rajaram Shimpi & Anr. ... **Petitioners**

V/s.

Deccan Merchants Co-op. Bank Ltd. & Ors. ... **Respondents**

WITH

WRIT PETITION (ST) NO.34257 OF 2018

Vivek Rajaram Shimpi & Anr. ... **Petitioners**

V/s.

Deccan Merchants Co-op. Bank Ltd. & Ors. ... **Respondents**

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Mr.Karan Thorat, Advocate for the Petitioner.

Mr.Pravin D. Kadam with Mr.Paresh C.Mankad with Mr.Nihar P.Mankad i/b.Pravin D. Kadam, Advocate for the Respondent Nos.1 and 2.

Mr.A.P.Vanarase, AGP for the Respondent/State.

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**CORAM : INDRAJIT MAHANTY &
A.M.BADAR JJ.**

DATED : 16th APRIL 2019.

P.C. :

1 Heard the learned Counsel for the respective parties.

2 This is a second writ application filed by the petitioner. The first writ application was disposed of by an Order dated 5th December 2018 in terms of which direction has been issued to the respondent bank restraining from taking possession of residential house being flat number B-RH 01 & Flat No.B/RH 02 on ground floor, B Wing of Lotus CHS Ltd., in complex known as Prestige Residency, Waghbil Naka, Ghodbunder Road, Thane mentioned in the Order dated 03.09.2018 of the learned District Magistrate. Thereafter, by an Order dated 5th December 2018, the aforesaid writ application came to be disposed of in terms of minutes of the Order. It is the case of respondent bank that the petitioner has not complied with any of the terms of such minutes of Order and consequently ought not to be permitted to be entitled to the interim Order passed herein. He raises various grounds in the petition as to why and in the manner in which the petitioner has violated this contract with bank. Consequently prayer has been made for vacation of the interim order to proceed against the secured assets.

3 On the other hand, the learned Counsel for the petitioner submitted that the assertion made by the Counsel for the party is found to be correct and the petitioner is entitled to

make an OTS application. In response to it, the learned Counsel for the respondent/bank submits that as the OTS scheme has lapsed on 31st March 2019 and there is no possibility of the bank considering the OTS scheme and that to by the writ petitioner who is admittedly a defaulter person who has not complied with the consent terms agreed to between the parties in the earlier order.

4 Heard the learned Counsel for both the parties. We direct that the interim Order dated 05/12/2018 ought to be vacated. Accordingly, we direct so. The parties are directed to take such steps as may be available to them.

5 In view of vacation of interim Order, we direct that there is no reason to keep the writ petition pending. Hence, the same also stands dismissed.

6 The learned Counsel for the petitioner sought for stay of operation of the Order. We find no reason to consider grant of stay, in particular keeping in mind the public money of the bank is involved in this case and the bank is entitled to proceed against the defaulter in accordance with law. Accordingly prayer for stay is rejected.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)