IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 245 OF 2019

Rose Solvent Pvt. Ltd. … Petitioner
V/s.
Union Bank of India & Ors. … Respondents

Mr. Aloukik Pai, Mr. Tejas A. Luniya, Mr. Nikhil Waje i/b Thodur Law Associates for the Petitioner.
Mr. H.P. Kor i/b Interjuris for Respondent Nos.1 and 2.
Mr. Saurabh C.N. for Respondent No.3.

CORAM : A.A. SAYED AND
RIYAZ I. CHAGLA, JJ.

DATE : 12th FEBRUARY, 2019.

ORDER :

1 The Petitioner has filed this Petition seeking the following reliefs :

"a) this Hon'ble Court be pleased to issue Writ of mandamus and/or appropriate writ, and/or direction under Article 226 of the Constitution of India, thereby quashing and setting aside the letter dated 17/01/2019 issued by the Respondent No.1 Bank.

b) this Hon'ble Court be pleased to issue Writ of mandamus and/or appropriate writ, and/or direction under Article 226 of the Constitution of India, thereby directing the Respondent No.1 Bank to permit the sale of the Flat No.704, 7th floor, Kent Garden CHSL, Jambli

Gally, Borivali (W), Mumbai 400 092 for a sum of Rs.1.75 Crores and accept the said amount toward the OTS.

c) this Hon'ble Court be pleased to issue Writ of mandamus and/or appropriate writ, and/or direction under Article 226 of the Constitution of India, thereby directing the Respondent No.1 Bank to permit the sale of the Office No.105, 1st Floor, Bharuch Sadan CHS, 84A, Devji Ratanshi Marg, Carnac Bunder, Masjid Bunder, Mumbai for such sum as may be offered by a buyer in consonance with the valuation report and accept the said amount in furtherance of the OTS."

2 At the outset, learned Counsel for the Petitioner stated that he is not pressing any reliefs so far as office No.105 is concerned and the reliefs are confined in respect of the residential premises being flat No.704.

3 By order dated 26.12.2018 in Review Application No.9 of 2018 filed by the Petitioner before the D.R.T., the Petitioner was permitted to sell the aforesaid flat No.704 within a month from the date of order i.e. 17.01.2019 by private treaty and the offered amount in respect of the purchase of the said flat was negotiable between the Petitioner and the Respondent-Bank and the Respondent-Bank was restrained from taking further action. In paragraph Nos.7 and 8 of the

said order dated 26.12.2018, the D.R.T. has observed as follows :

> *"7. Since, the applicant has sought pardon for non-compliance of the order dt.13.08.2018, which is hereby accepted. Further, the applicant has also prayed for extension of time beyond 27.12.2018 for handing over the physical possession of the suit property to the respondent bank till the settlement of the offer dt. 21.12.2018 of the applicants by the respondent bank. The respondent bank is hereby directed to accede to the offer dt.21.12.2018 of the applicant for sale/release of the said flat within a month from today. Consequently, the respondent bank is hereby restrained from taking any action against the applicant in respect of suit flat under the provisions of the SARFAESI Act and Rules made there under save and except the sale of the suit flat under private treaty between the respondent bank and the proposed purchaser and the offered amount for the purchase of the said flat may be negotiable and the offered amount will not be binding upon the respondent bank, which amount may be disputed for further negotiation for the sale amount conforming to legality and rationality.*
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> *8. It is made clear that in case the matter could not be settled within one month from today, the respondent bank shall be at liberty to proceed further under the provisions of the SARFAESI Act and Rules made there under without prior permission of the Tribunal, if the applicant fails to handover the physical possession of the suit flat within 10 days from the date of rejection of the offer by the respondent bank."*

4 Learned Counsel for the Petitioner states that the Petitioner is essentially seeking extension of time for the sale of the said flat

No.704 as directed by the D.R.T. When the Petition came up on 04.12.2019, learned Counsel for the Petitioner pointed out that the Petitioner has a proposed purchaser named Shantilal Kanji Haria who is willing to purchase the said flat No.704 in terms of the Valuation Report dated 05.12.2016 of the said flat. The Valuation Report is of a Valuer appointed by the Respondent-Bank and the said Valuation Report is annexed at page 135 of the Petition. In the said Valuation Report, Rs.1,73,54,400/- is stated to be the market value, the realizable value is stated as Rs.1,56,18,000/- and the distress value is stated as Rs.1,47,50,000/- of the said flat No.704. Learned Counsel for the Petitioner submitted that the said proposed purchaser Shantilal Kanji Haria is willing to pay the market value of Rs.1,73,54,400/- and not insisting on payment of the realizable value or distress value. Learned Counsel for the Respondent-Bank was therefore directed to take instructions on the said proposal of the Petitioner. The matter was thereafter adjourned to 06.02.2019 and then to 11.02.2019 (i.e. yesterday).

5 Yesterday, i.e. on 11.02.2019, however, Mr. Dhond, learned Senior Counsel for the Respondent-Bank appeared and submitted that a

fresh valuation was conducted by the Respondent-Bank and the fresh Valuation Report dated 04.02.2019 shows that the market value of the said flat as Rs.1,85,94,000/-, the realizable value as Rs.1,67,34,000/- and the distress value as Rs.1,58,04,000/. Learned Senior Counsel submitted that it is not possible for the officers to take a decision on the proposal of the Petitioner and that the decision has to be taken at the management level, else the officers may get into trouble. Learned Senior Counsel for the Respondent-Bank submitted that the Respondent-Bank should be permitted to sell the said flat No.704 by public auction so that the maximum price of the said flat can be fetched in the open market.

6 It is pertinent to note that the Respondent-Bank has not challenged the order dated 26.12.2018 whereby the Respondent-Bank was directed to accede to the offer of the Petitioner for sale/release of the flat within one month by private treaty subject to negotiation on the price of the said flat.

7 Learned Counsel for the Petitioner has drawn our attention to the letter dated 24.10.2017 addressed by the Petitioner to the

Respondent-Bank which reads as follows :

> *" We acknowledge receipt of your letter bearing No.ARB/MSM/428/2017 dated 11th October, 2017 permitting us time upto 31st March, 2018 and condoning the delay in repaying the dues in terms of OTS approved earlier. Further the aforesaid extension and condonation of delay has been approved on various terms and conditions as contained in the aforesaid letter. We are indeed thankful to you for approving our request.*
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> *Further we wish to request your kind reference to condition No.3 in terms of which we are required to pay a sum of Rs.28.26 lacs on or before 27th October, 2017 and upon payment of this sum of Rs.28.26 lacs, NOC for sale of the flat bearing No.704, 7th Floor, Kent Garden CHSL, Jamli Gali, Borivali (W) shall be issued in our favour. In compliance of this condition, we are tendering our cheque No.220149 for Rs.28,00,000.00 and cheque No.220150 for Rs.26,000.00 dated 27th October, 2017 with a request to kindly issue us your NOC to enable us to negotiate and conclude the deal for sale of the above flat with the prospective buyer."*
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> *(emphasis supplied)*

In reply to the aforesaid letter, the Respondent-Bank vide Reply dated 31.10.2017 had a matter of fact agreed to give their conditional NOC for sale of the aforesaid flat No.704. The said Reply dated 31.10.2017 of the Respondent-Bank to the Petitioner reads as follows:

> *" You are aware that Flat No.704, 7th Floor, Kent Garden CHS Ltd, Jamili Galli, Borivali (W), Mumbai is mortgaged with our Bank for the securities towards loan*

> *outstanding in the account of M/s Rose Solvent Pvt. Ltd. Since, you have already paid Rs.43.26 lakhs towards One Time Settlement (OTS) for Condonation of delay of Rs.4,26,76,411.00 +Delay period interest approved in your account, we give our Conditional No Objection for sale of aforesaid mortgaged flat. However, please note that the Bank will release Original title deeds of the above mentioned property and lift our charge/lien on the same, only after receipt of Rs.231.00 lakhs as per terms and conditions of OTS Condonation of delay, already communicated to you. "*
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> *(emphasis supplied)*

8 It is thus seen that even the Respondent-Bank had one time agreed for the sale of the flat by private treaty, though at the relevant time the parties had agreed to OTS. (which did not go through as the Petitioner had defaulted on payments under the OTS). Moreover, the Respondent-Bank has not even challenged the order dated 26.12.2018 of the DRT. Be that as it may, in view of the fresh Valuation Report dated 04.02.2019 of the said flat by the Valuer appointed by the Respondent-Bank in which the market value is shown as Rs.1,85,94,000/-, the realizable value as Rs.1,67,34,000/- and the distress value as Rs.1,58,04,000/-, we put it to the learned Counsel for the Petitioner whether the Petitioner/Purchaser is willing to pay the amount of Rs.1,85,94,000/- which shown as market value in the fresh

Valuation Report dated 04.02.2019 and adjourned the matter till day i.e. 12.02.2019 to enable the learned Counsel to take instructions.

9 Today, learned Counsel for the Petitioner stated that the Petitioner/Purchaser is ready and willing to pay an amount of Rs.1,86,00,000/- (which is Rs.6,000/- more to make it a round figure). The learned Counsel for the Petitioner submitted that in the present market conditions, the Respondent-Bank may not be able to sell the said flat even at the realizable value which is shown as Rs.1,67,34,000/-.

10 Learned Counsel for the Respondent-Bank however stated that the Respondent-Bank is not agreeable to the said proposal. We are unable to countenance the stand taken by the Respondent-Bank, particularly after having agreed at one time to grant its ‘no objection’ for sale of the said flat by the Petitioner and having not challenged the order dated 26.12.2018 and when the Petitioner/ Purchaser is ready to pay the market value of the said flat No.704 and the purchase price is being paid to the Respondent-Bank. The fact that the Petitioner may have been a chronic defaulter cannot be a factor to deny the offer of the Petitioner, the Respondent-Bank itself having at one time granted its

'NOC' for sale of the said flat by the purchaser. In the facts of the present case it is not possible for us to accept the contention of the learned Counsel for the Respondent-Bank that some adverse action may be taken against the officers for accepting the offer of the Petitioner/Purchaser particularly when the Respondent-Bank had at one time granted its 'No objection' for sale of the said flat No.704 by the Petitioner. In any event, nothing prevented, the officers of the Respondent-Bank to obtain the approval of the management for the sale of the said flat No.704 by the Petitioner. In these circumstances, we find that the stand taken by the Respondent-Bank is not at all reasonable particularly when we have made it clear to the learned Counsel for the Respondent-Bank that the Respondent-Bank would be free to proceed against the Petitioner insofar its balance outstanding dues are concerned in accordance with law. Hence, in the facts and circumstances of the case and in the interest of justice, we pass the following order :

ORDER

i) The Petitioner is permitted to add the purchaser Shantilal Kanji Haria as party Respondent No.4 in the Petition. Amendment to be carried out forthwith.

ii) We record the statement of the newly added Respondent No.4 Shantilal Kanji Haria who is present in Court that he will be purchasing the said flat jointly with his wife.

iii) We permit Respondent No.4 Shantilal Kanji Haria to pay Rs.47,00,000/- (approximately 25% of the amount of Rs.1,86,00,000/-) on or before 21.02.2019 and the balance amount of Rs.1,39,00,000/- on or before 30.03.2019 to the Respondent-Bank.

iv) An undertaking to the above effect shall be filed by the Respondent No.4 who is present in Court, by tomorrow i.e. 13.02.2019. It is made clear that if the undertaking is not filed by tomorrow by Respondent No.4 or the amounts as directed is not be paid within the stipulated period, the benefit of this order shall not be available to Respondent No.4 and the Petition shall stand dismissed. It is further made clear that in the event, there is default in payment of the 2nd installment, the amount of 1st installment Rs.47,00,000/- shall stand forfeited and the Undertaking of Respondent No.4 shall state so.

v) The Respondent-Bank to appropriate the sale proceeds of Rs.1,86,00,000/- towards the outstanding loan of the Petitioner. The Respondent-Bank shall confirm the sale in favour of Respondent No.4 and his wife within two weeks from the receipt of the sale proceeds and shall sign necessary documents to perfect the title of Respondent No.4 and his wife. The parties shall register the sale certificate and the Respondent-Bank also issue a letter releasing the said flat from security and handover the original title deeds of the flat to Respondent No.4. On completion of the sale, the Petitioner shall handover possession of the said flat No.704 to Respondent No.4.

vi) It is made clear that the Respondent-Bank shall be free to proceed against the Petitioner to recover the balance outstanding dues in accordance with law.

11 The Petition is disposed of in the aforesaid terms.

(RIYAZ I. CHAGLA J.) **(A.A. SAYED, J.)**