

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

WRIT PETITION NO.884 OF 2019

Majeed Mohamad Shaikh

..Petitioner

Versus

Deewan Housing Finance Corporation Ltd.

& Ors.

..Respondents

Mr. Mathew Nedumpara i/by R. R. Nair, Advocate for the Petitioner.

Mr. Shadab Siddiqui i/by R. L. Motwani, Advocate for the
Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 17th DECEMBER, 2019

P.C.

1] On 20.09.2019 following order was passed :-

"At the request of learned Counsel for the Petitioner, we permit the Petitioner to amend Petition to annex the correct Notification. Consequential amendments in the averments and prayer clause is also permitted. Amendment to be carried out within three weeks.

2. Learned counsel for the Petitioner has tendered an Undertaking of the Petitioner by which the Petitioner has undertaken to pay the sum of Rs.33,00,000/-. Out of the said amount, learned counsel for the Petitioner has handed over a Demand Draft of Rs.3,00,000/- dated 19th September, 2019 to learned Counsel for the Respondent No.1. The learned Counsel for the Petitioner has also handed over all the post-dated

cheques in terms of the Undertaking to the learned Counsel for the Respondent No.1. The Undertaking states that in the event any of the cheque is dishonoured, the Petitioner shall handover possession of the said Flat No.102 within 7 days.

3. Learned Counsel for the Respondent No.1 points out that as of today the dues of the Petitioner are around Rs.70.00 Lakhs.

4. We accept the Undertaking of the Petitioner. The Respondent No.1 shall defer taking possession of the Flat in question i.e. Flat No.102, which is scheduled to be taken tomorrow i.e. 21st September, 2019. It is made clear that in the event despite any cheque being dishonoured, the Petitioner does not handover possession of the said Flat No.102, the Petitioner shall be liable for action for aggravated contempt.

5. List the Petition on 5th November, 2019 for directions.”

2] The order was passed in view of the fact the 1st Respondent had initiated proceedings under Section 14 of the SARFAESI Act, 2002 to take possession of the secured asset referred to in the order dated 20.09.2019.

3] The Petitioner had paid ₹ 3 Lakhs by a Demand Draft dated 19.09.2019 on 20.09.2019 and had issued 10 post dated cheques in sum of ₹ 3 Lakhs each. 8 out of 10 cheques have been cleared. Meaning thereby, further sum of ₹ 24 Lakhs has been received by the 1st Respondent. The last two cheques are drawn on

18.12.2019 and 20.12.2019. The said two dates have yet to arrive.

4] Learned counsel for the 1st Respondent states that in all probabilities one cheque issued on 19.10.2019 was returned on 24.10.2019. Be that as it may, since substantial amount has been paid by the Petitioner to the 1st Respondent, we dispose of the Petition restraining the 1st Respondent from proceeding ahead under SARFAESI qua Flat No.102 pertaining to the demand which was raised at the time when the Writ Petition was filed.

5] Should the 1st Respondent be of the opinion that after adjusting amounts paid by the Petitioner the current EMIs are still in default, it would be open to the 1st Respondent to put the Petitioner to a notice alleging said fact and upon the Petitioner not clearing current EMIs action if any as per law may be taken.

Balaji
G.
Panchal

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Balaji G.
Panchal
Date:
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE