

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

WRIT PETITION (L) NO.1345 OF 2019

...
Amar Chetandas Motwani ... Petitioner
V/s.
The State of Maharashtra & Anr. ... Respondents
...
Mr. A.M. Saraogi, for the Petitioner.
Ms. Durga S. Soni i/b Vivek S. Sawant for Respondent No.2.

...
**CORAM : A.A. SAYED &
R.I.CHAGLA, JJ.**

DATED : 26 APRIL 2019**P.C.:**

Pursuant to the order dated 23 April 2019, the Petitioner has filed an Undertaking, which reads as follows:

“ I Amar Chetandas Motwani, age 44 years of Bombay, adult, Indian Inhabitant, residing at Flat No.501 and 502 situated in the Building known as Dina Building situated at 53, Maharshi Karve Road, Ward No.C-2299, Street Nos.51 to 51A, 53A, 53B and bearing City Survey Nos.1/431 and 2/431 of Village Bhuleshwar, Mumbai the Petitioner hereinabove do hereby state and undertake as under:

1. I say that I have preferred to file the aforesaid Petition before this Hon'ble Court seeking the reliefs as prayed for and accordingly I

crave leave to refer to and rely upon copy of the Petition as and when produced.

2. I say that in view of the urgency by giving notice to the Respondent specifically Respondent No.2 hereinabove, I have moved urgent application before this Hon'ble Court on 23-04-2019 and after hearing parties concerned this Hon'ble Court have been pleased to protect the possession of the Petitioner in respect of flat in question and accordingly I have to refer and rely upon the said order as and when produced before this Hon'ble Court.
3. I say that in compliance to the direction given by this Hon'ble Court in the said order I am filing my present affidavit by way of Undertaking as under.
4. I say that the cheque given by me was sum of Rs.50 lacs to the Respondent No.2 have been encashed and I undertake to honor 3 different cheques bearing cheque No.158503, 158504 and 158505 all dated 14-05-2019 for Rs.50,00,000/- each issued from Union Bank, Bazargate Street and the said cheques have already given to the Respondent No.2.
5. I undertake that in the event of failure on my part to clear the aforesaid 3 cheques given to Respondent No.2 and or in the

event if the said cheques are returned unpaid, I do hereby undertake to handover vacate and peaceful possession of the flat in question Flat No.501 and 502 situated in the Building known as Dina Building situated at 53, Maharshi Karve Road, Ward No.C-2299, Street Nos.51 to 51A, 53a 53B and bearing City Survey Nos.1/431 and 2/431 of Village Bhuleshwar, Mumbai without any obstructions.

6. I say that, I do hereby agree confirm and undertake to obey the order passed by this Hon'ble Court dated 23-04-2019 without there being any failure on my part.
7. I say that whatever stated hereinabove is true and correct.”

We accept the aforesaid Undertaking of the Petitioner.

2. It is the case of the Petitioner that the Borrower has already sold the Flat Nos.501 and 502, (which are the secured assets) to the Petitioner by a registered Agreement dated 7 September 2018 and the Petitioner has paid the entire consideration. It is the further case of the Petitioner that he was not aware of the mortgage and that he is an innocent bonafide purchaser and he has been duped by the Borrower. We are informed by the learned Counsel for the Petitioner that there are atleast 10 FIRs lodged

against the Borrower and the Borrower is now absconding.

3. Inasmuch as the Petitioner has already paid the sum of Rs. 1 crore to the Respondent-Bank and has further handed over 3 post-dated cheques aggregating to Rs.1.50 crores, the Respondent-Bank really can have no grievance as they have realised the value of the flats in question. On the request of the learned Counsel for the Respondent-Bank we clarify that Rs.2.50 crores is the realizable value of the said flats.

4. Notwithstanding the objection on behalf of the Respondent-Bank, we direct the Respondent-Bank to issue sale certificate in respect of the said flats to the Petitioner, which shall be registered in accordance with law and shall also handover the title-deeds of the said flats to the Petitioner. This will be subject to rights of the Borrower/3rd parties, if any. It is made clear that in respect of further outstanding dues of the Respondent-Bank, the Respondent-Bank shall be free to proceed against the borrower.

5. We record the statement of the learned counsel for the Petitioner that the Petitioner shall withdraw all the proceedings before the DRT and DRAT at the earliest.

6. The Petition is disposed of in the aforesaid terms.

(R.I.CHAGLA,J.)

(A.A.SAYED, J.)