

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

WRIT PETITION NO.2470 OF 2019

Asset Reconstruction Company (India) Limited ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

Ms. Priyanka Fadia i/by Mr. Shashank Fadia, Advocate for the
Petitioner.

Mr. Himanshu Takke, AGP for Respondent No.1 – State.

Mr. Milind Sathe, Senior Advocate a/w Mr. Ramesh Dube-Patil, Ms.
Khushbu Marwadi i/by M/s. Joy & Co., Advocates for Respondent
Nos.2 & 3.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 4th NOVEMBER, 2019

P.C.

- 1] Heard learned counsel for the parties.
- 2] The Petitioner is an Asset Management Company and claims to have acquired right, title and interest of Dewan Housing Finance Corporation Ltd. under a Deed of Assignment dated 20th January 2018. The Deed of Assignment has not been filed along with the Writ Petition but that would be irrelevant.
- 3] The Petition admits that Maharashtra Industrial Development Corporation was the owner of parcel of land bearing No.B-11, in Dindori Industrial Area which was initially licensed by it

to M/s. Shree Vaishnav Casting Pvt. Ltd. and thereafter leased to said company on 12th May 2015. Under the Indenture of lease, M/s. Shree Vaishnav Casting Pvt. Ltd. was obliged to construct a factory building and obtain an Occupancy Certificate. The last date by which the factory had to be constructed was 19th January 2017. Since the lessee: M/s. Shree Vaishnav Casting Pvt. Ltd. desired a loan to be advanced to it by Dewan Housing Finance Corporation Ltd. a tripartite agreement dated 26th May 2015 was executed between Maharashtra Industrial Development Corporation, M/s. Shree Vaishnav Casting Pvt. Ltd and Dewan Housing Finance Corporation Ltd. Under the said Tripartite Agreement Dewan Housing Finance Corporation Ltd. was referred to as the financial institution and as consideration for the loan advanced by it to M/s. Shree Vaishnav Casting Pvt. Ltd. upon default was entitled to sell the premises in question as per clause (2) of the agreement but subject to clauses (a) to (f) thereof. Clause (d) being relevant to be noted, reads as under :-

“d) In the event of the Lessee committing any default or committing breach of any of the covenants and conditions of the said lease and the Lessor deciding to exercise it’s right to reenter upon and resume possession of the said plot of land, the Lessor shall give unto the Financial Institution/s at least 6 months, notice in writing specifying the default or breach committed by the Lessee and the Lessor shall not exercise it’s right of reenter or resumption unless the Lessee or the Financial Institution/s or any of them have failed to remedy the same within 6 months from the date of receipt of the said notice.”

4] On 20th January 2018, as noted above, the Petitioner, under the Assignment Agreement took over the rights of Dewan Housing Finance Corporation Ltd.. Concededly the Assignment Agreement does not bear the signatures of any officer of Maharashtra Industrial Development Corporation and the Corporation is not a party thereto.

5] On 1st January 2018 Maharashtra Industrial Development Corporation issued a notice to M/s. Vaishav Casting Pvt. Ltd. as also to Dewan Housing Finance Corporation Ltd. informing that since condition of lease requiring building to be constructed by 19th January 2017 had been violated why action be not initiated and allotment of the plot be not cancelled.

6] Challenge in the Writ Petition is to said letter dated 29th January 2019 and the argument advanced at the hearing of the Writ Petition is that since under the Tripartite Agreement Dewan Housing Finance Corporation Ltd. was vested with the right to sell the secured asset as an assignee, the Petitioner can sell the same.

7] The argument overlooks the fact that the right of the financial institution to sell the secured asset as per clause (2) of Tripartite Agreement dated 26th May 2015 was subject to paragraph (d) thereof. Meaning thereby, if the lessee committed default by not adhering to terms of the lease, the lease was liable to be revoked.

8] The Petitioner, as an assignee of Dewan Housing Finance Corporation Ltd. can at best step into the shoes of the company and respond to the show-cause notice raising such defences as would be permissible in law.

9] By no stretch of imagination or of legal reasoning can it be said that Maharashtra Industrial Development Corporation was not entitled to issue show-cause notice which has been challenged.

10] Challenge to the show-cause notice fails.

11] The Writ Petition is dismissed. However, it is observed that as an assignee of Dewan Housing Finance Corporation Ltd., the Petitioner may respond to the show-cause notice as the successor in interest of Dewan Housing Finance Corporation Ltd.

Balaji G.
Panchal

Digitally signed by
Balaji G. Panchal
Date: 2019.11.05
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE