IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2634 OF 2019

Ajit Krishna Mohite & Anr. ....Petitioners
V/S
Federal Bank & Ors. ....Respondents

Mr Minal Desai i/b T. R. Patel for the Petitioners.
V. N. Ajikumar for the Respondent No. 1-Federal Bank.

CORAM : A. A. SAYED &
PRAKASH D. NAIK, JJ.
DATED : 20th September, 2019

P.C.:

The Petitioners are essentially challenging the order dated 03.07.2019 passed by the Chief Metropolitan Magistrate under section 14 of the SARFAESI Act for taking physical possession of the secured asset viz. Flat No. 308, 3rd Floor, Building No. 9, Malad Malvani Sanskruti Co-op. Hsg. Soc. Ltd., Chatrapati Shivaji Raja Complex, Opp. Ekta Nagar, Kandivali (W), Mumbai–400067 (hereinafter referred to as the said Flat No. 308). The Court Commissioner is scheduled to take over possession of the said flat on 21st September, 2019 at 11.00AM.

2. The Petitioners have come with a case that they have purchased the said Flat No. 308 by Registered Sale Deed dated 31st December, 2015 from one Mr. Uday Kumar Singh. According to

the Petitioners they were in need of financial assistance for the purpose of renovation of the said flat No. 308 and for the purpose of repaying the debts they had incurred for purchasing the said flat no. 308. They had therefore approached the Respondent Nos. 2 and 3 (husband and wife) for loan of Rs.10.00 Lakhs.

3. It is the further case of the Petitioners that the Respondent Nos. 2 and 3 agreed to advance a loan to the Petitioners, however, they took advantage of their illiteracy and under the guise of advancing loan against the said flat no. 308, fraudulently executed a Registered Agreement for Sale dated 22nd July, 2016 instead of a Mortgage Deed. It is thus the case of the Petitioners that there was fraud perpetuated by the Respondent Nos. 2 and 3 upon the Petitioners.

4. Learned Counsel for the Respondent – Bank has submitted that the Petitioners have come with an entirely false case. The learned Counsel submitted that the Petitioners have no concern with the said flat and have sold the said flat to the Respondent Nos. 2 and 3 by a Registered Agreement for Sale dated 22nd July, 2016. He has pointed out that the Respondent Nos. 2 and 3 had obtained loan from the Respondent No. 1 – Bank by mortgaging

the said flat and since they had defaulted in making payments, measures were taken against the Respondent No. 1-Bank under the SARFAESI Act and physical possession of the secured asset is due to be taken on tomorrow i.e. 21st September, 2019. The learned Counsel has pointed out that the Respondent Nos. 2 and 3 have not challenged the measures taken by the Respondent No. 1-Bank and are now seeking to challenge the same by circuitous method through the Petitioners who are in collusion and who have no right title or interest in the said flat.

5. During the course of the hearing and since it was submitted that the Petitioners have been duped by the Respondent Nos. 2 and 3 by entering into a Registered Agreement for Sale instead of Mortgage Deed, we asked learned Counsel for the Petitioners to take instructions from the Petitioner No. 1, who is present in the Court, whether the Petitioners have custody of the original Sale Deed dated 31st December, 2015 executed between Mr. Uday Kumar Singh and the Petitioners. Learned Counsel, on instructions, informed us that the custody of the original Sale Deed dated 31st December, 2015 is with the Petitioners.

6. We informed the learned Counsel for the Petitioners that we are inclined to keep the matter back and that the matter would be called out in the afternoon session to enable the Petitioners to produce the said original Sale Deed dated 31st December, 2015 for the perusal of the Court.

7. Learned Counsel for the Respondent No. 1 Bank, however, pointed out that the Petitioners are not in the custody of the said original Sale Deed dated 31st December, 2015 and custody of the same is with the Respondent No. 1-Bank. He submitted a compilation of the documents and has pointed out the copy of the letter dated 20.09.2016 which reflects that the Respondent Nos. 2 and 3 have handed over the Original Sale Deed dated 31st December, 2015 to the Respondent No. 1-Bank.

8. It is pointed out that under the Agreement for Sale dated 22nd July, 2016 executed between the Petitioners and the Respondent Nos. 2 and 3, the Petitioners have sold the said flat for a consideration of Rs.37.50 Lacs and an amount of Rs.7,50,000/- was paid as earnest money on the date of execution of the Agreement for Sale and the balance amount of Rs.30.00 Lakhs was to be paid within 45 days. Learned Counsel for the

Respondent No. 1-Bank pointed out the Statement of Account of the Petitioner No. 1 with Axis Bank annexed as Annexure-D to the Writ Petition which shows that the balance amount of Rs.30.00 Lacs was received by the Petitioner No.1 on 19.09.2016 from the Respondent Nos. 2 and 3.

9. Upon instructions from the Petitioner No. 1, learned Counsel for the Petitioners now informs the Court that that the Petitioners do not have the Original Sale Deed dated 31st December, 2015.

10. In the facts and circumstances of the case, we have no hesitation in holding that the entire case of fraud practiced by the Respondent Nos. 2 and 3 upon the Petitioners by executing the Registered Agreement of Sale instead of Mortgage Deed seems unbelievable. We do not rule out collusion between the Petitioners and the Respondent Nos. 2 and 3 so as to somehow thwart action of the Respondent No. 1-Bank from taking physical possession of the said flat no. 308 which is a secured asset of the Respondent No. 1- Bank.

11. In the facts and circumstances, we find that the Petitioners have not come to the Court with clean hands. The Petition is

dismissed with cost of Rs.10,000/- to be paid by the Petitioners to the High Court Legal Services Committee within a period of 4 weeks from today.

(PRAKASH D. NAIK,J.) **(A.A.SAYED, J.)**