

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2786 OF 2019**

Ramola Mandar Nerurkar & Ors.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Ashok Saraogi, Advocate for the Petitioners.

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

Ms. Shirin Shaikh, Advocate for Respondent No.3.

Ms. Jyoti Agrawal i/by Mr. Chetan Agrawal, Advocate for Respondent No.4.

Mr. Siddharth Samantray, Advocate for Respondent No.5.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 13th NOVEMBER, 2019

P.C.

1] Heard learned counsel for the parties.

2] As pleaded by the Petitioners, 2nd Respondent held out that he was in process of constructing a building on a plot of land bearing No.69, Hissa No.2-E, Village Ghorpadi, Taluka Haveli, District Pune. The Petitioners went to the site and saw construction work in full swing. The Petitioners booked Flat Nos.B-1, B-13, B-14, B-19 and B-20 in the proposed buildings to be constructed on the plot of land and obtained financial assistance from Respondent Nos.3, 4 and 5 concerning the said five flats. The Petitioners mortgaged the five flats to Respondent Nos.3 to 5, being flat Nos.B-19 and B-20 to Respondent No.3, flat Nos.B-13 and B-14 to Respondent No.4 and flat No.B-1 to Respondent No.5.

3] As per the indenture of loan, the loan amount was disbursed by Respondent Nos.3 to 5 directly in the name of Respondent No.2. The amounts were duly credit to a account in the name of Respondent No.2.

4] Possession of the flats not being handed over to the Petitioners, they sought specific performance of the agreement which Respondent No.2 had executed with them. The said suit seeking specific performance has been registered as Suit No.834 of 2018 and currently awaits adjudication before the Civil Judge, Pune.

5] In the written statement filed in the suit by Respondent No.2 he has falsely pleaded that he had executed and got registered Power of Attorney in favour of one Mr. Mohsin Mulla who has defrauded him. Respondent No.2 has pleaded that he suspects collusion between the Petitioners and the said Mr. Mohsin Mulla. The said plea overloads the fact that the second Respondent has executed the sale agreements in person.

6] There being default in payment of the credit advanced by Respondent Nos.3 to 5, the Petitioners desired that Respondent Nos.3 to 5 should take action under SARFAESI Act and after taking possession of the flats sell the same. The reason is obvious. Directly through Respondent No.2 the interest was acquired in the flats and the same were mortgaged in favour of Respondent Nos.3 to 5.

7] The problems which Respondent Nos.3 to 5 face, as

informed to us, is that in the absence of an identified sanctioned building plan, they are unable to locate the five flats in the towers constructed by Respondent No.2.

8] As regards the defence of Respondent No.2 in the Civil Suit filed by the Petitioners, suffice it to state that if the Constituted Attorney of Respondent No.2 has cheated him, the Petitioners cannot be held responsible. Respondent No.2 has to take action against his Attorney. Respondent No.2 would be bound by the acts of his Attorney. In any case, qua the Petitioners it is Respondent No.2 who has executed the agreements and not his Attorney.

9] Thus, we dispose of the Writ Petition directing that upon the Petitioners being able to establish the identity of the flats agreed to be sold by Respondent No.2, which flats are secured assets for the loans advanced by Respondent Nos.3 to 5 to the Petitioners, the Respondent Nos.3 to 5 would proceed under Section 14 of the SARFAESI Act to take possession of the secured flats and after selling the same credit sale proceeds to the loan account of the Writ Petitioners.

10] No costs.

**Balaji G.
Panchal**

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Balaji G. Panchal
Date: 2019.11.13
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE