

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

WRIT PETITION (L) NO.3074 OF 2019

M/s. Daya Builders & Ors.

..Petitioners

Versus

Reshma Kanekar & Ors.

..Respondents

Mr. Minesh Shah i/by K. C. Pandey, Advocate for the Petitioners.

Mr. Rishabh Shah i/by Mr. Nishant Rana, Advocate for Respondent No.2.

Mr. Milind More, AGP for Respondent No.3 – State.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 7th NOVEMBER, 2019

P.C.

1] Having heard learned counsel for the parties and having perused the order dated 31st March 2017 passed by the Supreme Court in SLP (C) No.5345/2015, suffice would it be to record that the Petitioner has lost the battle right till the Supreme Court concerning adjudication of the debt due and payable to 2nd Respondent. The order passed by the Supreme Court on 31st March 2017 also affirms the fact that three secured properties being : (I) Plot of land admeasuring about 6031 sq.mtrs., bearing survey no.261 (part) of village Malad (East), Taluka Borivali, in Registration Sub-District situated at Gokuldham, Goregaon (East) Mumbai-400063, together with proposed commercial and residential building to be constructed there on named “Daya Duriabh” with its Basements space, ground

floor and 37 floors, with 107 flats therein along with 4 level floors of Podium Parking space and garden, (II) Entire Building admeasuring aggregate Built Up area about 14852 sq.ft. called “Daya Sarita C-Wing” with its Basement space, ground floor and Two stories constructed on property bearing Survey No.262, Hissa No.1, 2 and 3 and CTS No.658/A of Village Malad (East), Gokuldham, Goregaon (East) Mumbai-400063 together with furniture’s, Fixtures and fitting, Easements appurtenances to the said land hereditaments or premises whether presently in existence in future belonging to the Opponents and (III) Flat No.101 in “A” Wing of “Daya Sarita” Building contracted on property bearing Survey No.262, Hissa No.1, 2 and 3 and CTS No.658/A, of Village Malad (East), Gokuldhan, Goregaon (East) Mumbai-400063 together with furniture’s, Fixtures and fitting therein, present and future, belonging to the oppents projects receivable, Stocks, Cements, Sand Marbles, Granite Beam channel, pint electric equipments, etc. lying at conduction site of Daya Sarita Building being secured assets become liable for attachment and sale to realize due payable to the 2nd Respondent.

3] The only direction which is warranted is to direct the 2nd Respondent to comply with the order passed by the Supreme Court directing as under :-

“We consider it just and appropriate to direct, that in case of the necessity for auctioning the attached properties arises (in the event of the petitioner not making the deposit in terms of the impugned order), the respondent

shall, in the first instance, sell property 'A', which is stated to be valued at Rs.24.89 crores. In case the amount found due and outstanding from the petitioner is recovered by the above sale, it shall not be necessary for the respondent to sell the other two properties indicated as 'B' and 'C' in the notice at Annexure 5. However, in case the amount is not fully recovered by the sale of property 'A', it shall be opened to the respondent bank, in that event, to recover the same progressively by selling properties 'B' and 'C', in that order.

In view of the dismissal of Special Leave Petition, pending application(s), if any, stands disposed of.”

4] Needless to state if there are more than one properties of a debtor all need not be sold together for the reason it may be possible that by effecting sale of one or more than one properties the debt would be satisfied.

5] Learned counsel for the Respondent No.2 states that after valuation, properties would be put to auction keeping in view the valuations as per the valuation report and if the value of a particular property is opined to be equal to or more than the amount to be satisfied, that property would be put to auction first. If the debt is satisfied the other two properties would be released. If debt remains unsatisfied then the second property would be put to auction. If the debt is satisfied the third property would be released. If debt remains unsatisfied then the third property would be sold.

(902)-WP1-3074-19.doc.

6] The Writ Petition is disposed of directing respondent to act as per paras 3 and 4 above.

7] No costs.

Balaji G.
Panchal

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by Balaji G.
Panchal
Date: 2019.11.08
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE