

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**O.O.C.J.**

WRIT PETITION (L) NO.4258 OF 2018

...
The Cosmos Co-op. Bank Ltd. ...Petitioner
v/s.
Mr.Kantilal Laskhmshi Nishar Shah & Ors. ...Respondents
...
Ms.Fatima Barodawala i/b Raval Shah for the Petitioner.
Mr.Sandeep Kumar Singh for Respondent Nos.1 to 4.
Ms.Sukanta Karmarkar, AGP for the State.

...
CORAM : A.A. SAYED &
A.S.GADKARI, JJ.

DATED : 14 JANUARY 2019**P.C.:**

We have perused the order dated 7 December 2016 of this Court passed in Writ Petition (L) No.3282 of 2016, which reads as follows:

“ORDER:

Not on board. Upon mentioning, matter is taken up at 4.30 pm.

2 The learned counsel for the Petitioner, on instructions of the Petitioner, who is present in Court, makes statement that within ten days from today, the Petitioner will deposit an amount of Rs.25,00,000/-(Rupees twenty five lacs only) with Respondent No.1-Bank. The Petitioner has moved this writ petition on 7.12.2016 as the Chairman of Debts Recovery Appellate Tribunal is on leave and, therefore, there is no Appellate Authority available as contemplated under the SARFAESI Act. The question is of taking possession of residential premises to which the statement is made

by the learned counsel for the Respondent No.1-Bank that today pursuant to notice already issued, they have taken possession of the property. The learned counsel for the Petitioner, however, is denying the same. At this stage, without going to that controversy as the Petitioner has volunteered to deposit Rs.25,00,000/- (Rupees twenty five lacs) within ten days from today and considering the interest of the parties, we are inclined to observe that Respondent-Bank shall allow the Petitioner to occupy the premises in accordance with law. The steps be taken accordingly to that effect immediately. The amount, if not deposited, the protection so granted by this order shall stand vacated without reference to Court's order.

3 In the meantime, the Petitioner to approach to the appropriate Appellate Forum and pursue the remedy in accordance with law.

4. In view of this, the writ petition is disposed of with the above observation, with liberty.”

2. The Respondent No.1 (Petitioner in Writ Petition (L) No.3282 of 2016) has deposited the amount of Rs.25 lakhs in terms of the order dated 7 December 2016 and has been enjoying the possession of the secured asset till date. The Respondent No.1 has already filed an Appeal in the DRAT and the DRAT is presently functioning.

3. In the circumstances, the Respondent No.1 may approach the DRAT to seek appropriate ad-interim/interim relief in the Appeal filed by him. We record the statement of the learned for the Petitioner-Bank that for a period of three weeks from today, they will not take steps to evict the Respondent No.1.

4. We make it clear that the DRAT would be free to pass orders as it deems appropriate without being influenced by the order dated 7 December 2016 or the present order.

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

(A.S.GADKARI,J.)

(A.A.SAYED, J.)