

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 2635 OF 2019

Mushtaq Shabbir Momin .. Petitioner
Vs.
Oriental Bank of Commerce & Ors. .. Respondents

Ms. Asha Kanzariya i/b Vijay Upadhyay for the Petitioner.
Mr. Anup Khaitan a/w. Simran Singh I/b Anup Khaitan & Co. for
Respondent No.1.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**
DATE : 4th FEBRUARY, 2020.

P. C. :

1. On 16.01.2020 informing that no further indulgence would be granted the hearing of the Petition was deferred for today.
2. Learned Counsel for the Petitioner seeks an adjournment which is declined.
3. The Petitioner seeks a mandamus against the 1st Respondent to release title deed of Flat No. H/801, Hill Mist Harmony, Kondhwa Khurd, Pune. The Petitioner wants declaration in his favour that the bank permitted the Petitioner and Respondent No.4 to purchase the flat from Respondent Nos.2 and 3 who had mortgaged the flat to the bank. The Petitioner wants a direction be issued to the bank to return ₹ 35 lakhs to the Petitioner.
4. The innocently drafted Writ Petition making aforesaid prayers

overlooks the fact that the Petitioner has litigated on the issue before the Debt Recovery Tribunal and lost vide order dated 22.02.2019.

5. The said order shows that the Debt Recovery Tribunal was not inclined to pass any order in favour of the Petitioner and the Petitioner withdrew the Securitization Application.

6. Pleadings in the Writ Petition are to the effect that the Petitioner admits Respondent Nos.2 and 3 having mortgaged the flat in question to Respondent No.1. Case pleaded in the Petition is that the Respondent Nos.2 and 3 requested the Petitioner and Respondent No.4 to finance payment to the bank under a One Time Settlement Agreement contained in the letter dated 22.03.2016 written by Oriental Bank of Commerce.

7. The said OTS Agreement required ₹ 55.25 Lakhs to be paid within three months. The Petitioner financed ₹ 35 Lakhs.

8. Suffice it to state that the OTS Agreement is not with the Petitioner and Respondent No.4, it is with the borrowers. There is an *inter se* arrangement between the Petitioner and Respondent No.4 and the borrowers. Concededly the sum of ₹ 55.25 Lakhs has not been paid by the borrowers.

9. Remedy of the Petitioner, if any, is against the Respondent Nos.2 and 3. Under no circumstances the bank can be directed to return ₹ 35 Lakhs to the Petitioner or to hand over title deed of the flat to the Petitioner.

10. The Writ Petition is dismissed.

Arjun M.
Kadam

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by Arjun M.
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Date: 2020.02.04
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[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]