

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION (STAMP) NO. 28188 OF 2019

Nirmala Balasaheb Bhintade & Anr.

.. Petitioners

Vs.

SBI Global Factors Ltd. & Anr.

.. Respondents

Mr. Mathew J. Nedumpara i/b Navaneetha Krishnan for the Petitioners.
Mr. Rohit Gupta a/w. Mr. Dhaval A. Patil i/b M/s. K. Ashar & Co. for
Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 11th FEBRUARY, 2020.

P. C. :

1. A short and simple issue is unnecessarily being misdirected.
2. Challenge to a measure obtained by the 1st Respondent under Section 14 of the SARFAESI Act, 2002 before Debts Recovery Tribunal, by the Petitioners was premised on the plea that they have not created any equitable mortgage of the flats bearing Nos. C-505 and C-506, 5th floor, "C"- Zenith Co-op. Society Ltd. Bhavani Nagar, Marol, Andheri (W), Mumbai belonging to them. The 1st Respondent claimed equitable mortgage in its favour by deposit of title deed.
3. Regretful, the order dated 06.07.2018 passed by the DRT does not deal with this issue. The resolution of the issue simply required the Debts Recovery Tribunal to call upon the Petitioners as well as Respondent No.1 to produce title deeds. If the Respondents produced the title deeds, it was proof that equitable mortgage was created.
4. The impugned orders dated 20.08.2019 and 17.09.2019 passed by

the Debts Recovery Appellate Tribunal required the Petitioners to deposit 50% of the sum demanded by the 1st Respondent as a pre-condition for admission of the appeal and as a consequence of the deposit not being made the Appeal stood dismissed.

5. Case of the Petitioners is that they being neither borrowers nor guarantors nor having mortgaged their flats, they were not liable to make any pre-deposit.

6. In view of the facts noted hereinabove, justice and equity demands that the Writ Petition be disposed of quashing the orders dated 20.08.2019 and 17.09.2019 passed by the Debts Recovery Appellate Tribunal in Appeal No. 41 of 2018. The order dated 06.07.2018 passed by the Debts Recovery Tribunal is also quashed. S.A. No.384 of 2018 is restored before the Debts Recovery Tribunal-II, Mumbai with a direction to the Presiding Officer to call upon the Petitioners as well as 1st Respondent to produce the title deeds of the two flats.

7. Needless to state, if a claim is that the mortgage is by deposit of title deeds, the person who so asserts has to produce the title deeds.

8. Needless to state, if the person against whom it is pleaded that the said person has created an equitable mortgage by depositing the title deed of his property produces the title deed that would be proof that no equitable mortgage has been created.

9. Applying the simple test of observability, learned Debts Recovery Tribunal should decide the issue.

10. The Writ Petition is disposed of.

**Arjun M.
Kadam**

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]