

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13096 OF 2019

Mr. Sanjay Santosh Kapoor

..Petitioner

Versus

Union Bank of India & Ors.

..Respondents

Mr. Ajay Panicker a/w Mr. Amit Kakri i/by Ajay Law Associates,
Advocates for the Petitioner.

Mr. Ali Patel i/by Mr. Samshed Ansari, Advocate for Respondent
No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATE : 2nd JANUARY, 2020

P.C.

1] Having heard learned counsel for the parties, suffice would it be to record that the Petitioner claims to be a *bona fide* purchaser without notice of an alleged mortgage right claimed by the 1st Respondent Bank in Flat No.23 in Shivgiri CHS Ltd. The Petitioner has been litigating on the right of the Bank to proceed against said property treating the same to be a mortgaged asset. The Debts Recovery Tribunal took the view that the appropriate remedy was a civil suit. The Petitioner approached the Civil Court. The Civil Court took the view that it had no jurisdiction.

2] Deciding Writ Petition No.5943 of 2017 filed by the Petitioner on 9th June 2017 this Court categorically held, and rightly so, that the Petitioner cannot be without a remedy. It was held that

either the Civil Court ought to have decided the issue or the Foras under the Recovery of Debts and Bankruptcy Act, 1993 (“RDB Act, 1993”).

3] The direction was that upon the Petitioner filing an application before the Debts Recovery Tribunal, the Tribunal shall decide the issue on merits.

4] The Petitioner complied with the direction dated 9th June 2017. The Debts Recovery Tribunal proceeded to hear arguments and reserved the matter for judgment. The judgment has yet to be pronounced. In the meanwhile upon the Bank filing an application before the Recovery Officer to execute the decree which the Bank obtained against the principal borrower, impugned notice dated 21st November 2019 has been issued appointing M/s. Invent ARC Private Ltd. as the Receiver to sell the property.

5] In view of the afore-noted facts, we dispose of the Petition quashing the impugned notice dated 21st November 2019, simultaneously requesting the Debts Recovery Tribunal to decide Misc. Application No.139 of 2017 filed by the Petitioner in terms of the order dated 9th June 2017 in Writ Petition No.5943 of 2017.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2020.01.02
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE