

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

Amk

WRIT PETITION (L) NO. 261 OF 2020

Rizwana Ibrahim Sayed

.. Petitioner

Vs.

Tata Capital Financial Services Ltd. & Ors.

.. Respondents

Mr. Rishab Seth a/w. Usama Memon for the Petitioner.

Mr. R. L. Motwani for Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 27th JANUARY, 2020.

P. C. :

1. The Petitioner, in possession of Flat No. C-502, Panch Natraj Co-operative Housing Society Ltd. Since 01.02.2017 is agrieved by the order dated 03.12.2019 passed by the learned Debt Recovery Tribunal in SA No. 430 of 2019.
2. The Petitioner had approached the Tribunal when the 1st Respondent enforced the security created in its favour by Respondent Nos.3 and 4 by mortgaging the flat in question for the credit availed of.
3. The Petitioner brought to the notice of the Debt Recovery Tribunal that her possessory right as tenant on leave and license could not be curtailed by the 1st Respondent.

4. The impugned order shows complete lack of knowledge of law by the Debt Recovery Tribunal for the reason a bonafide occupant of a mortgaged property is entitled to seek protection of the possession warranting the Debt Recovery Tribunal to direct that the secured asset has to be sold after intimating the prospective purchaser that a possessory right of the Claimant exists in the property.

5. The leave and license agreement relied upon by the Petitioner shows that the period thereof is 3 years, meaning thereby, on 31.01.2020 the right of the Petitioner to continue to occupy the premises would cease.

6. We are just 4 days away from the date 31.01.2020.

7. It would be futile to pass any effective order in favour of the Petitioner for the reason after the midnight of 31.01.2020 the Petitioner would have no right to protect possession under the leave and license agreement relied upon by the Petitioner.

8. Learned Counsel for the Petitioner makes an equitable plea that under the leave and license agreement the Petitioner has spent huge amount to refurbish the property. The Petitioner desires a direction to be issued to the 1st Respondent permitting the Petitioner to clear the dues payable to the 1st Respondent by the 3rd and 4th Respondent so that the Petitioner could retain the possession of the mortgaged asset.

9. This would require a negotiation from the side of the mortgagors.
10. Thus, declining relief as prayed for we simply declare that if the Petitioner proposed to the 1st Respondent to liquidate the dues of the 2nd and 3rd Respondents, taking concurrence from them at an agreed price the 1st Respondent could consider the request of the Petitioner.
11. No costs.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
Kadam
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