

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

WRIT PETITION NO. 3360 OF 2019

Ramona Aloysius Furtado

..... Petitioner

VERSUS

**Joint Registrar Co-operative
Society Mumbai Division & Ors.**

..... Respondents

Mr.Surel Shah, a/w. Mr.Ashok Tukaram Gade for the Petitioner.

Mr.Manish Upadhye, A.G.P. for the State – Respondent nos. 1 and 6.

Mr.Rajesh A. Tekale for the Respondent no.2.

**CORAM : R.D.DHANUKA &
SURENDRA P.TAVADE, JJ.**

DATE : 18th MARCH, 2020

P.C.

By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for writ of mandamus directing the respondent no.2 bank to restore the possession of the flat bearing no. 101, on the 1st floor, admeasuring 1040 sq.ft. + 18.58 sq.mtrs. open terrace described in paragraph (1) of the petition and for other reliefs.

2. By an order dated 2nd November,2018 passed by the Division Bench of this court in Writ Petition No.1691 of 2018 filed by the petitioner, this court recorded the statement made by the petitioner that the petitioner would approach the Recovery Officer of the respondent no.2 bank and file claim/objection and/or challenge the possession notice dated 1st August,2017 as well a action of the respondent no.2 bank qua rights, title, interest accrued to her under the said registered

agreement for sale dated 19th May, 2003 by 7th December, 2018. The respondent no.2 agreed before this court that the *ad-interim* order passed by this court in respect of the said flat shall continue and they shall not take physical possession or any coercive action against said flat of the petitioner in pursuance to the order dated 14th December, 2017 as well as notice dated 1st February, 2018 issued by Mandal Adhikari, Panvel. This court made it clear that in case of any adverse order passed by the Recovery Officer of the respondent no.2, the said interim protection shall continue for a period of one month from the date of communication of the said order to the petitioner.

3. It is the case of the respondent no.2 that pursuant to the said order passed by the Division Bench, the Recovery Officer of the respondent no.2 has passed an order on the said objection filed by the petitioner under Rule 107(19) (a) of the Maharashtra Co-operative Societies Rules, 1961 rejecting the said objection. It is the case of the petitioner that the said order passed by the Recovery Officer has not been served upon the petitioner. It is also the case of the petitioner that without effecting the service of the said order, the respondent no.2 took forcible possession of the flat in question on 26th June, 2019.

4. The petitioner thereafter filed a revision application before the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai (Revision Application No.354 of 2019) under section 154 of the Maharashtra Co-operative Societies Act, 1960 against the respondents and also applied for interim relief. By an order dated 5th December, 2019 passed by the Divisional Joint Registrar, the impugned proclamation of sale notice dated 4th July, 2019 issued by the Special Recovery Officer under section 156 of the Maharashtra Co-operative

Societies Act, 1960 read with section 107(11)(e) of the Maharashtra Co-operative Societies Rules, 1961 for auction of the petitioner's property came to be stayed till next date of the hearing. The Divisional Joint Registrar also directed the respondent no.2 to hold symbolic possession of the suit flat and to temporarily restore the physical possession of the suit flat to the petitioner forthwith till disposal of the said revision application. The revision application is still pending.

5. Learned counsel for the petitioner submits that the alleged order passed by the Special Recovery Officer has not been served upon the petitioner. He submits that the respondent no.2 thus could not have executed the said alleged order for a period of one month till the said order would have been communicated. The forcible possession of the suit flat by the respondent no.2 is thus in violation of the order passed by this court on 2nd November,2018.

6. Learned counsel for the respondent no.2 on the other hand submits that the said order passed by the Special Recovery Officer was served upon the petitioner on 29th January,2019 and the petitioner not having impugned the said order within a period of one month, the respondent no.2 has enforced the said order passed by the Special Recovery Officer by taking forcible possession.

7. Insofar as the order dated 5th December,2019 passed by the Divisional Joint Registrar is concerned, it is submitted by the learned counsel that the revision application filed under section 154 of the Maharashtra Co-operative Societies Act, 1960 itself is not maintainable and thus the learned Divisional Joint Registrar could not directed the respondent no.2 to handover the physical possession of the suit flat to the petitioner. He also invited our attention to Rule 107(19) (c) and

would submit that the remedy of the petitioner, if any, against the order passed by the Special Recovery Officer thereby rejecting the objection filed by the petitioner under section 107(19)(a) would be by filing a civil suit and not by filing the revision application under section 154 of the Maharashtra Co-operative Societies Act, 1960.

8. A perusal of the order dated 2nd November, 2018 passed by the Division Bench of this court clearly indicates that if the order passed by the Special Recovery Officer would have been adverse against the petitioner, the said order was not required to be implemented within a period of one month from the date of communication of such adverse order to the petitioner. The question as to whether the said impugned order has been in fact served upon the petitioner or not itself is doubtful.

9. Be that as it may, learned counsel for the petitioner on instruction agrees to file a civil suit for adjudication of the right, title and interest of the petitioner in the suit property by adopting remedy under Rule 107(19)(c) within a period of four weeks from today. Statement is accepted. A copy of the plaint along with annexures shall be served upon the respondent no.2 within one week from the date of filing such suit. The petitioner would be at liberty to apply for interim relief before the Civil Court.

10. Without going into the issue whether the petitioner could have filed revision application under section 154 of the Maharashtra Co-operative Societies Act, 1960 against the order passed by the Special Recovery Officer under Rule 107(19)(a) or not, we direct the respondent no.2 to handover the vacant possession of the suit flat to the

petitioner within one week from today. The petitioner shall not create any third party rights in respect of the said flat till further orders are passed by the Civil Court.

11. The respondent no.2 also would be at liberty to apply for vacating the interim protection granted by this court in favour of the petitioner by filing an application. If any such application is made for continuation of the interim order passed by this court by the petitioner or for vacating interim protection granted by this court to the respondent no.2, the Civil Court shall decide the same on its own merits.

12. It is made clear that if the petitioner does not file any civil suit within four weeks from today, interim protection granted by this court to stand vacated without further reference to court.

13. Writ petition is disposed of on the aforesaid terms.

14. The parties as well as the Civil Court to act on the authenticated copy of this order.

[SURENDRA P.TAVADE, J.]

[R.D.DHANUKA, J.]