Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1910 OF 2021 (FILING)
WITH
MISCELLANEOUS CIVIL APPLICATION NO.181 OF 2021
IN
WRIT PETITION NO.1910 OF 2021(FILING)

WRIT PETITION NO. 1910 OF 2021 (FILING)

Kantipudi Kulsekhar And Anr. **.Petitioners**

Versus

Authorised Officer, Saraswat Co-op. Bank Ltd., Small And Medium Enterprises Goa And 2 Ors. **..Respondents.**

Mr. A. D. Bhobe, Advocate *for the Petitioners.*

Mr. U. R. Timble, Advocate *for the Respondents No. 1 and 2.*

Mr. Vilas P. Thali, *with* **Mr. Nikhil Angle, Advocates** *for the Respondent No.3.*

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IN
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Kantipudi Kulsekhar And Anr. **.Respondents**

Mr. U. R. Timble, Advocate *for the Applicants No. 1 and 2.*

Mr. Vilas P. Thali *with* **Mr. Nikhil Angle, Advocates Advocate** *for original Respondent No.3.*

Mr. Ashwin D. Bhobe Advocate *for the original Petitioners.*

CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ.

DATED: 28th September 2021

ORAL ORDER:

1. Heard Mr. A. D. Bhobe, learned Counsel for the petitioners, Mr. U. R. Timble, learned Counsel for respondents No.1 and 2, Mr. Vilas P. Thali along with Mr. Nikhil Angle, learned Counsel for respondent No3.

2. In this case, on 15.09.2021, we made the following order:

> *'**1.** Heard Mr. A.D. Bhobe along with Mr. Chirag Angle for the Petitioners and Mr. U.R. Timble for the Respondents No.1 and 2.*
>
> ***2.** Ordinarily, we would not have entertained this petition, because the Petitioners have an alternate and efficacious remedy available to them before the Debt Recovery Tribunal (DRT) in terms of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). However, in this case, Mr. A.D. Bhobe, on instructions from the Petitioners, made a statement that*

the Petitioners have already expressed readiness and willingness to deposit the entire demanded amount of Rs.76,45,855.32 in this Court by way of a demand draft. Mr. Bhobe, in fact, carries such demand draft with him for immediate deposit in the Registry of this Court.

3. *Mr. Bhobe submits that the Petitioners had, in fact, made a representation to the Respondents offering to pay the aforesaid demanded amount against the return of the original title deeds and possession of the mortgaged premises. He pointed out that this representation was rejected by the bank vide communication dated 13.09.2021 without assigning any cogent reasons. Mr. Bhobe points out that the auction is scheduled today at 3:00 p.m. and considering the circumstances that the rejection letter was received by the Petitioners only on 13.09.2021, it will be almost impossible for the Petitioners to access the DRT which is at Mumbai. He submits that since the entire amount is now being secured, this Court should intervene and stay the auction.*

4. *Mr. Timble, learned Counsel for the Respondents No.1 and 2, submits that the communication dated 13.09.2021 should not be construed as a rejection of the offer of the Petitioners. He submits that there is a dispute between the Petitioners and Respondent No.3, on account of the dissolution of their partnership firm. He submits that even though the Petitioners have produced and relied upon an arbitration award, some dispute persists between the parties. He submits that the Respondent bank is not concerned with these disputes, at the same time, does not want to get involved in these disputes. He submits that it is in these circumstances that the communication dated 13.09.2021 was addressed.*

5. *Mr. Timble submits that since the entire amount is being secured, the Respondents, will not proceed with the auction that is scheduled today.*

He, however, points out that merely because the amount is deposited in this Court, the interest in the loan account will not stop. He, therefore, submitted that it would be in the interest of the Petitioners themselves to deposit this amount

with the bank.
***6.** The Petitioners have already impleaded Respondent No.3, who has now raised some sort of a dispute, as a party to this petition. Therefore, before any further orders are made in this matter, it would be appropriate if the version of Respondent No.3 is considered.*
***7.** The Petitioners, to deposit the demand draft in an amount of Rs.76,45,855.32 in the Registry of this Court. The Registry to accept this demand draft, encash the same, and deposit it in a suitable Nationalized Bank account until further orders.*
***8.** Having regard to the Petitioners securing the entire demanded amount and the statement of Mr. Timble, the auction which is scheduled today should not proceed.*
***9.** Notice is issued to Respondent No.3 returnable on 22.09.2021.*
***10.** In addition to the usual mode of service, private service / humdast is permitted.*

***11.** The notice to indicate that an endeavour shall be made to dispose of this matter finally at the stage of admission.*
***12.** All concerned to act on an authenticated copy of this order.'*

3. The aforesaid order was made because respondents No.1 and 2 were exercising their powers under the SARFAESI Act, 2002 and proceeding to auction the mortgaged premises even though, the petitioners had offered to pay the entire demanded amount much before the date of the auction. To secure the interest of respondent No.2, we had ensured that the petitioners actually deposit the demanded amount in this Court before any interim relief could be granted.

4. Respondent No.1 and 2 have now taken out a civil application seeking liberty to withdraw the deposited amount for adjustments towards the loan account. Mr. Bhobe, learned Counsel for the petitioners on instructions has stated that the petitioners will have no objection if the Bank withdraws the deposited amounts and, thereafter, releases the title deeds as well as the possession of the mortgaged properties in favor of the petitioners.

5. Mr. Thali, learned Counsel for respondent No.3 however has objections to the adoption of the aforesaid course of action. Mr. Thali points out that though in terms of the arbitral award dated 31.03.2018, the petitioners are to take over the mortgaged asset after settlement of the loan account with respondents No.1 and 2, such taking over was subject to several other reciprocal compliances by the petitioners. He submits that the petitioners have not made reciprocal compliances. He even referred to instances where such compliances are lacking. He, therefore, submitted that though respondent No.3 can have no objection to respondents No.1 and 2 withdrawing the deposited amount and settling the loan account, the title deeds and the possession of the mortgaged premises should be handed over to respondent No.3 instead of the petitioners herein. Mr. Thali also stated that this petition is not maintainable because respondent No.2-Bank is not a State under Article 12 of the Constitution of India.

6. As regards the objection about the maintainability of the petition, we must once again clarify that in this case, the respondent No.1 and 2 were exercising powers under SARFAESI Act and proceeding to auction the mortgaged property even though the petitioners had offered to pay the entire demanded amount. Since certain statutory powers were being exercised by respondents No.1 and 2, this petition was entertained. The auction was stayed only upon ensuring that the entire demanded amount is deposited by the petitioners in this Court. This was also one of the reasons why we did not relegate the petitioners to the DRT, even though, normally in a matter of this nature, the petitioners would have been relegated to the DRT.

7. Since, both the parties have referred to the arbitration award dated 31.03.2018, it is necessary to note that this arbitral award at Clause 12A-III states that the retiring partners shall take over the assets mentioned in Table “I” against full and final settlement of their share in Milroc Good Earth Property & Developers LLP (respondent No.3). There is no dispute that the petitioners have been referred to as “*retiring partners*” in the said clause. There is also no dispute that Clause 4 of Table-I refers to the mortgaged properties that are the subject matter of the present petition.

8. From the aforesaid, at least prima facie it appears that it was the petitioners, who were required to settle the loan account of respondent No.3 with the Bank and thereafter take over the mortgaged property. This is precisely what the petitioners have done in the present case. They have deposited the entire demanded amount towards the loan liability of respondent No.3 in this Court and they have no objection whatsoever if this amount is withdrawn by the Bank and deposited against the loan liability of respondent No.3. Having done this, at least *prima facie*, the mortgaged asset and the title deeds in respect thereof, will have to be handed over to the petitioners herein. The issue of reciprocal compliances will have to be agitated before some other forum at the stage of the execution of the award.

9. However, Mr. Thali referred to Clause 12-A(a) and (b) which read as follows:

> *'12. The first of such minutes of settlement which marked as S-1 for identification are recorded and transcribed below as "A" are in respect of the Agreement dated 02/07/2015 and pertains to resolution/settlement of disputes that have arisen in respect of and pertaining to Milroc Good Earth Property & Developers LLP. The*

parties have agreed to the following:

A. <u>Minutes of the order/settlement in respect of Milroc Good Earth Property & Developers LLP</u>:

……

……

a) The Cost of the stamp duty, registration fee and legal charges for transfer of any of the properties as per the Table I from Milroc Good Earth Property & Developers LLP to retiring partners shall be borne equally by the continuing and the retiring partners.

b) The transfer of properties at Sr. No 3, 4, 5, 6, 8 and 10 as per the Table I of any of the above properties from Milroc Good Earth Property & Developers LLP to the retiring partners or any other entity/persons/nominees & successors whose name is suggested by the retiring partner, shall be completed before 30/04/2018.

10. Mr. Thali learned Counsel based on the aforesaid Clauses submitted that there are reciprocal compliances, involving actual execution of transfer documents. He submitted that the petitioners are not coming forward to make such compliances and, therefore, the mortgaged properties and the title deeds cannot be handed over to the petitioners at least at this stage. Mr. Thali also submitted that in terms of the award the petitioners are required to make some payments to respondent No.3 and they have, to date, not made such payments. He submitted that this is the additional reason as to why the mortgaged property and the title deeds in respect thereof should not be handed over to the petitioners.

11. In this petition, the Court is not concerned with the inter se disputes between the petitioners and respondent No.3 in the context of the execution of the award dated 31.03.2018. For this, the parties will have to take out appropriate proceedings before the appropriate forum. Even the Bank, strictly speaking, is not interested or concerned with such inter se disputes. As long as the Bank receives the amount due to it against the loan account of respondent No.3, the Bank can have no difficulties in releasing the mortgaged property and the title deeds in favor of the parties, making the payments and/or the party, i.e. *prima facie* entitled to take over the mortgaged property in terms of the arbitration award dated 31.03.2018. Mr. Timble also agrees with such a position.

12. Since the Petitioners are settling the entire loan liability of Respondent No. 3 with the Bank, at least prima facie, it will not be appropriate to accept Mr. Thali's contention that the possession and title deeds of the mortgaged assets be handed over to Respondent No. 3 even before there is some adjudication about the reciprocal compliances concerning the award dated 31.03.2018.

13. Mr. Thali however submits that some protection be granted to respondent No.3 because some time would be required to take out proceedings before the appropriate forum for securing suitable final and interim reliefs. He proposes that for at least 90 days the Bank ought to be restrained from handing over the possession of the mortgaged premises and the title deeds in favor of the petitioners. Mr. Bhobe, learned Counsel for the petitioners opposes the request made by Mr. Thali but submits that at the highest, a period of 30 days may be granted.

14. According to us, a period of 60 days can be granted to protect the interest of respondent No.3 in this matter. If within the period of 60 days the respondent No.3 does not institute proceedings before the appropriate forum and does not obtain necessary final or interim orders therein, respondents No.1 and 2 are directed to hand over the possession and the title deeds of the mortgaged assets to the petitioners. Again, such handing over will be without prejudice to the rights of the parties and be subject to further orders that will be made in the proceedings taken out by respondent No.3 in the context of the arbitration award dated 31.03.2018.

15. Accordingly, this petition and the Civil Application are disposed of by making the following Order:

ORDER

a) The respondents No.1 and 2 will be entitled to withdraw the amounts deposited by the petitioners in this Court and appropriate the same against the loan account of respondent No.3.

b) The Petitioners have today paid to the respondents No.1 and 2 further amount of ₹34,812/- towards further interest and charges accrued since the issue of the demand notice.

c) The respondents No.1 and 2 now state that the proceedings for recovery of the loan amount will now be dropped, since, the respondents No.1 and 2 have received the entire demanded amount.

d) The respondents No.1 and 2 shall hold on to the possession of the mortgaged assets as well as the title deeds for a period of 60 days from today.

e) If, within this period of 60 days, the respondent No3 does not produce any interim or final order restraining the respondents No.1 and 2 from handing over the possession of the mortgaged premises and the title deeds to the petitioners herein, the respondent No1 and 2 shall hand over the possession of the mortgaged assets and the title deeds thereto, to the petitioners herein.

f) Even after the possession of the mortgaged assets and the title deeds are handed over by respondents No.1 and 2 to the petitioners herein, such handing over will be subject to and will have to abide by any orders that will be made in the proceedings taken out by respondent No.3 in the context of the execution of the award dated 31.03.2018.

g) It is clarified that it will be open to the petitioners and respondents No.1 and 2 to go into the issues of reconciliation of the accounts and make adjustments even though the loan account is closed. If ultimately anything is found to be refundable, the Bank will refund the same to the petitioners herein.

h) It is further clarified that this Court has not even remotely gone into the issues of inter se disputes between the petitioners and respondent No.3 and therefore all contentions of all parties are expressly left open. Therefore, if any proceedings are taken out by the parties, they will have to be decided uninfluenced by any observations made in this order.

15. There shall be no order as to costs.

16. All concerned to act based on the authenticated copy of this order.

SMT. M. S. JAWALKAR, J. **M. S. SONAK, J.**