

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6252 OF 2022

Smt. Charuben K Mehta ...Petitioner
Versus
Phoenix Arc Pvt. Ltd. And Ors. ...Respondents

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Dr. U. P. Warunjikar i/by Ms. Swarali Joglekar, Advocate for the
Petitioner.

Mr. Rahul Narichania a/w Mr. Durgesh Kulkarni, a/w Mr. Akshay Sawant, a/w Ms. Dimple Merchant a/w Ms. Juhi Shah i/by I.V. Merchant & Co. Advocate for Respondent Nos. 5 to 8.

Mr. Kishore Jain a/w Mr. Vinay Deshpande a/w Mr. Rupak Sawangikar
i/by M/s. V. Deshpande & Co. Advocate for Respondent No.1.

Ms. S. D. Shinde, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, &
ABHAY AHUJA, JJ.**

DATE : 25th MAY, 2022.
(Vacation Court)

PER COURT:

1. Heard both sides.
2. The Petitioner assails order dated 10th May, 2022 on Exh.727 in Transfer Recovery Proceeding No.878 of 2016 in Original Application No.303 of 2002 by which the application for

stay of the proceeding has been rejected by Recovery Officer, DRT-1, Mumbai. The petitioner has also sought to challenge the order dated 10th May, 2022 in Transfer Recovery Proceeding No.878 of 2016 in Original Application No.303 of 2002 to the extent that the registry has been directed to issue certificate of sale with regards to the subject property of the immovable property in favour of Respondent No.5 sole bidder in relation to the subject property.

3. Learned counsel for the Petitioner submitted that further proceeding of recovery are required to be stayed. The application preferred by the Petitioner for seeking such relief has been rejected by the Recovery Officer. It is submitted that the Petitioner is the owner of subject property and she is not the borrower of Respondent Nos. 1 and 2. The Petitioner has filed the complaint dated 16th April, 2022 with Gamdevi Police Station, Mumbai alleging fraud and forgery of her signatures in letter of guarantee dated 27th July, 2000 and Mortgage Deed dated 27th October, 2000 after the said documents were recently made available to her. The Gamdevi Police Station issued summons to the Respondent No.1 under Section 91 of the Criminal Procedure Code for production of documents and notice under Section 160 of Criminal Procedure of Code seeking attendance of witnesses. The

Respondent No.1 had consciously not complied with the summons. The inquiry in respect to the said complaint is in progress. The Petitioner has also preferred Writ Petition before this Court seeking registration of FIR and completion of inquiry conducted by the Police in relation to her complaint. The report of inquiry is a material document which is in relation to the investigation about the allegations of fraud and forgery of signatures of Petitioner. Till the outcome of inquiry, the recovery proceedings are required to be stayed. The Respondent No.1 has preferred Writ Petition (St.) No.7297 of 2022 had approached this Court challenging the summons issued by Senior Police Inspector of Gamdevi Police Station. Vide order dated 26th April, 2022, this Court directed Gamdevi Police Station not to take any action or coercive steps in pursuance of the summons issued against Respondent No.1. The said order was challenged before the Hon'ble Supreme Court by preferring Special Leave Petition No.13227 of 2022. The Petition was disposed of by the Hon'ble Supreme Court by order dated 29th April, 2022, with observation that the order of the High Court is only an ad-interim order and the Petitioner is at liberty to pursue appropriate remedies in accordance with law before the High Court. The Petitioner filed Interim Application No.1431 of 2022 in Writ Petition pending before this Court. Vide order dated 2nd May,

2022, this Court observed that State is bound to complete the inquiry if initiated within the stipulated period and the report of the inquiry be placed for perusal of this Court on the next scheduled date. Thus, it is incumbent upon the investigating agency to complete the inquiry. The inquiry report is required to be perused by the Court and hence, till further orders the recovery proceedings be stayed.

4. Learned counsel for Respondent Nos. 5 to 8 submitted that, repeated attempts are made by the Petitioner to obstruct the recovery proceedings. The claim of forgery has been alleged belatedly. The Petition is not maintainable in law. The impugned order could have been at the most challenged by invoking the appellate jurisdiction. The Petition is devoid of merits. The Special Leave Petition preferred by the Petitioner challenging the order dated 26th April, 2022 passed by this Court in Writ Petition (St.) No.7297 of 2022 has been dismissed by the Apex Court. Repeated attempts are being made to stall the sale. The Petitioner is the party to the Consent Terms dated 1st October, 2013 filed before the Debt Recovery Appellate Tribunal and at this stage she cannot deny her liability. The tribunal had passed order dated 27th September, 2016 on the basis of Consent Terms by directing the parties to

abide by undertaking given vide clause No.16 of the Consent Terms. Attempts were made to stall the recovery proceedings by approaching the City Civil Court. The Petitioner had preferred Writ Petition No.2537 of 2021 before this Court and the said petition was dismissed with costs quantified at Rs.1,00,000/-. The said petition was preferred for seeking directions against the Recovery Officer, DRT-1 and the Respondent No.1 herein not to take any steps to alienate, encumber, transfer, value and/or auction the Flat No.37, 18th Floor, Usha Kiran, Carmicheal Road, Mumbai, belonging to the Petitioner in the Present Petition until the Debt Recovery Appellate Tribunal, Mumbai is functional and decides the petitioner's appeal. The respondents are auction purchasers.

5. We have perused the impugned order dated 10th May, 2017 refusing grant of stay to the Recovery Proceeding. The Petitioner had contended before the Recovery Officer that the signature of the Petitioner on mortgage deed and letter of guarantee is forged and fabricated and has not been signed by her. Police complaint with Gamdevi Police Station has been filed which is under investigation and summons were issued to the applicant to produce original documents. In view of the investigation of fraud and forgery, the Transfer Recovery Proceeding may be stayed. The

order further mentions that after hearing both the sides and going through the record it is found that the defendant therein tried their best to delay the Recovery Proceeding by making various applications. The subject application is another attempt to halt the recovery proceedings. The mortgage with regards to subject property was validated by Judgment dated 24th July, 2005 passed by Presiding Officer DRT-1, Mumbai. During the hearing of OA the defendant never challenged the creation of the mortgage of the property nor it was challenged thereafter.

6. Vide another order dated 10th May, 2022, the DRT Receiver was directed to prepare inventory of household articles, if any, lying inside the flat and submit the report thereof. The defendants were directed to remove their belongings, if any from the premises within 15 days in co-ordination with DRT Receivers. It was also observed that as per record and submission of certificate holder, no application is pending for setting aside the sale before the tribunal and the entire sale proceeds for both the properties have been deposited within stipulated time period and the registry had informed that auction purchasers have already deposited poundage fees. Hence, for property situated at Flat No.37 at 18th Floor, Usha Kiran, 15, Carmichael Road, Mumbai, sale is confirmed

in favour of auction purchaser Acrynova Industries Private Limited (Respondent No.5 in present Petition). Registry was directed to issue ITCP 14 in favour of auction purchaser and also directed to deposit poundage fees in Government account.

7. It is apparent that, the mortgage with regard to subject property was validated by judgment dated 24th July, 2005 passed by Presiding Officer, DRT-1, Mumbai. There was no challenge to creation of mortgage of the property. The Petitioner was party to the Consent Terms referred to herein above. The Petitioner had challenged the order dated 26th April, 2022 passed by this Court granting interim relief in Writ Petition Stamp No.7297 of 2022 before the Hon'ble Supreme Court. The Petition was dismissed on the ground that no case for interference is made out. In the said order dated 29th April, 2022, it was also observed that the Court has been apprised of the fact that possession of the apartment is to be taken over on 2nd May, 2022 which cannot be interdicted in those proceedings. Apparently, the Petitioner has filed a complaint with Gamdevi Police Station after several years. The contention of the Petitioner is that she came to know about the forgery in the document recently and the complaint is filed thereafter. Since the said inquiry is pending, we do not wish to make any observations

in that regard. However, on the ground that the inquiry is in progress, we are not inclined to stay recovery proceeding. As stated herein above, the Petitioner had preferred Writ Petition No.2537 of 2021 seeking relief as mentioned above which Petition has been dismissed with costs by order dated 11th February, 2022. The Division Bench of this Court, while dismissing the said Petition had observed that the Court has niggling doubts about the merits of the Petition. Admittedly, vide judgment dated 24th July, 2006, Original Application No.303 of 2002 was filed against one of the respondent therein and its guarantors were directed to pay the amount with interest that lead to recovery proceedings. The borrower then filed an appeal. They also challenged the measures under the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002. The Petitioners therein and the Respondent Nos.3 to 10 in the said Petition arrived at the settlement and executed the Consent Terms dated 1st October, 2013, which was filed before Debt Recovery Appellate Tribunal in pending appeals. It was further observed that it is an exercise to frustrate the auction process.

8. In light of the factual matrix as stated herein above, we are not inclined to grant the relief prayed in this Petition. It is

apparent that this is one more attempt to halt the recovery proceeding. The Petition is devoid of merits and deserves to be dismissed.

ORDER

Writ Petition No.6252 of 2022 is dismissed and stands disposed of accordingly.

(ABHAY AHUJA, J.)

(PRAKASH D. NAIK, J.)