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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8639 OF 2022

Sanjay Dnyandeo Zurale

.....Petitioner

Vs.

Bank of India Ltd.

.....Respondent

WITH

INTERIM APPLICATION (ST) NO. 18689 OF 2022

Mr. Aniket Deshmukh

.....Applicant

In the matter between

Sanjay Dnyandeo Zurale

.....Petitioner

Vs.

Bank of India Ltd.

.....Respondent

Ms. Anita Castelino i/by Mr. Zia Sayed for Petitioner.

Mr. D. A. Das a/w Ms. Priya Nigwekar for Respondent.

Mr. Vivek Salunke for Applicant in IA(St) 18689 of 2022.

**CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.**

DATE : 30th SEPTEMBER, 2022

P.C.:-

1. Prayer clause (a) and prayer clause (b) read as under:-

“a) that this Hon’ble Court may be pleased to restrain the Respondent from taking physical possession of the Flat namely Flat No. 1303, 13th floor, Pratik Garden CHS Ltd, Dafodil Plot No. 153 to 165, Sector No. 34, Kamothe, Tal: Panvel, Dist : Raigad, Navi Mumbai – 410 209;

b) that this Hon'ble Court may be pleased to quash and set aside the Order dated 02.02.2022 passed by the Hon'ble District Magistrate, Alibaug;"

2. As regards prayer clause (a), Mr. Das refers to Affidavit-in-Reply affirmed on 25st July, 2022 of one Ipsita Tripathy on behalf of Respondent, in which it is stated that the said property was sold on 7th September, 2021 and the purchaser has paid the entire sale proceeds.

3. In fact the purchaser has filed an Interim Application seeking leave to add him as a party Respondent, which is also listed on board today. We are inclined to allow the Interim Application and the same is hereby allowed. Amendment to be carried out forthwith.

4. In the Affidavit-in-Reply on behalf of Respondent, it is also stated that before the sale symbolic possession of flat has been taken on 23rd July, 2021 and the sale notice was issued on 6th August, 2021. The order alleging the Application of Respondent under Section 14 of the SARFAESI Act dated was passed on 2nd February, 2022 and that is impugned in prayer clause (b) of the Petition.

5. Admittedly, against the said order, an Application under Section 17 of the SARFAESI Act was filed before the Debts Recovery Tribunal, which Application has been dismissed by an order dated 30th May, 2022.

6. In our view Petitioner should avail his alternative remedy available and approach the Debts Recovery Appellate Tribunal. We are not inclined to interfere.

Petition dismissed.

7. If Petitioner files an Appeal before the DRAT or any other forum, DRAT/such other forum may dispose the Appeal/Application on its own merits and in accordance with law. We have not made any observation on the merits of Petitioner's case.

(A. S. DOCTOR, J.)

(K. R. SHRIRAM, J.)