

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15108 OF 2022

Union Bank Of India

...Petitioner

Versus

The Competent Authority And
Sub Divisional Officer And Ors.

...Respondents

Mr.Simil Purohit i/b.Mr.Jamshed Ansari, for Petitioner.

Mr.S.L. Babar-AGP, for respondent No.6.

Mr.Shekhar Jagtap a/w. Rhea Francis i/b. J. Shekhar & Co., for
respondent No.3.

Mr.Chandan Athani i/b. Mr.Siddharth Ambegaonkar, for respondent
No.2 (NHAI).

Mr.Mayur Jadhav i/b. Mr.S.S. Panchpar, for respondent No.5 (Bank).

Mr.Vilas B. Tapkir, for respondent No.4 (PDCCL Bank).

**CORAM : R.D.DHANUKA &
M.M.SATHAYE, JJ.**

DATED : 8th DECEMBER, 2022

P.C. :

1. Rule. Mr.S.L. Babar, learned AGP waives service for respondent No.6. Mr.Shekhar Jagtap, learned counsel waives service for respondent No.3. Mr.Chandan Athani, learned counsel waives service for respondent No.2. Mr.Mayur Jadhav, learned counsel waives service for respondent No.5. Mr.Vilas B. Tapkir, learned counsel waives service for respondent No.4. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of

India, the petitioner has impugned the order dated 01.12.2022 passed by the respondent No.1 thereby disbursing the compensation in favour of respondent No.4 who has in turn remitted the amount to respondent No.5. There was a dispute between the parties. Respondent No.4 had given a loan to respondent No.3. The petitioner had also given loan to respondent No.2. Admittedly, the first charge in respect of said property mortgaged was in favour of respondent No.4 and second charge in favour of the petitioner. The competent authority has adjudicated rival claims of the parties instead of referring the dispute to Civil Court and also was proceeded with disbursement of the amount of compensation in favour of respondent No.4.

3. In our view, respondent No.1 could not have decided such issue of priority under the Provisions of National Highways Authority Act, 1956 in view of dispute between the petitioner and respondent No.4. The competent authority ought to have referred the parties to Civil Court. In our view, respondent No.1 could not have decided contentious issues between the petitioner and respondent No.4.

4. In our view, petitioner will have to file a civil suit for adjudication of his claim in respect of the property in question.

5. It is made clear that if any such civil suit is filed by the petitioner, the Civil Court shall decide the said suit on its own merits

and in accordance with law without being influenced by the observations made and conclusion drawn in the impugned order passed by the respondent No.1 authority. The petitioner would be at liberty to apply for interim relief in the said suit for seeking an order or direction against respondent Nos.4 & 5 to deposit the amount and for withdrawal. If any, such an application is filed by the petitioner for interim relief, the Trial Court shall consider such application on its own merits and in accordance with law.

6. Writ petition is disposed off in aforesaid terms.
7. Rule is made absolute.
8. Parties to act on the authenticated copy of this order.

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)