IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2612 OF 2018
WITH
INTERIM APPLICATION NO.3161 OF 2021

Hansel Henry Mathias ..Petitioner/Applicant
Versus
Sarita Hansel Mathias ..Respondent

Ms. Susan Abraham with Narayane Suvarna, for the Petitioner/Applicant.
Mr. Jay Vora, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 30th NOVEMBER, 2022

P.C.

1. Heard.

2. The challenge in the present petition is to the order dated 2nd November, 2017 delivered in Petition No.A-2715 of 2015 which was initiated by the respondent/wife. Vide impugned order, the petitioner was directed to continue to pay EMI towards the joint flat owned by the parties to the petition i.e. Flat No.B-3/301, Ashok Tower, Odd. Military Road, Marol, Andheri East, Mumbai-400 072. The present petitioner was restrained from disposing of or creating third party interest in said property. As such, the present petition.

2. The contention of counsel for the petitioner while questioning the legality and validity of the order impugned is, the petitioner is co-borrower and a joint owner of the said property with respondent/wife. As such, it is claimed that both the parties to the petition are equally responsible to repay the amount of loan. According to her, the petitioner has other liabilities/responsibilities viz. maintenance of his own parents and has limited sources of income. According to her, the petitioner was working on contract basis in Merchant Navy and at times was out of job as the nature of employment is contractual. As such, it is claimed that the amount of loan which is cleared by the respondent towards the flat in question is without consent of the petitioner or in absence of any permission from the Court. That being so, the order impugned is liable to be quashed and set aside.

3. Counsel for the respondent submits that the suit flat which is subject matter of the order impugned was attached under the provisions of the SARFAESI Act. Even if the petitioner and respondent are the co-borrowers, so as to provide shelter to the only daughter Hansika who was born out of the marriage on 29th June, 2007, so also to safeguard the interest of respondent, the lump-sum amount was required to be paid thereby clearing the loan liability. As such, according to him, keeping the right of the respondent reserved to recover the said amount from the petitioner, the petition is liable to be dismissed.

4. I have appreciated the submissions.

5. The parties to the petition got married on 3rd February, 2005 and the daughter Hansika was born on 29th June, 2007. Admittedly, the daughter is in custody of the respondent/wife.

6. Both the parties to the petition have decided to jointly purchase the said flat and as such jointly borrowed the amount from the bank by mortgaging the said flat. After the parties were in matrimonial discord, the respondent approached the Family Court seeking directions to the petitioner to pay the monthly installments of the said property. The Family Court accordingly directed the petitioner to pay the monthly installments.

7. As the petitioner has failed to pay the monthly installments, the property was subjected to action under the SARFAESI Act. In this background of the facts, it can be inferred that the said flat is matrimonial home of both the parties and the respondent/wife along with her minor daughter are staying therein. As the petitioner has failed to clear the loan liability in spite of the order of the Family Court, the respondent was prompted to clear the said loan liability so as to save the property from the clutches of the SARFAESI Act. The steps taken by the respondent are in tune with the provisions of the SARFAESI Act, so as to save the property from being auctioned. Such, that act of the respondent by itself will not give leverage to the petitioner to claim that the respondent ought

not to have cleared the liability without permission of the Court or without consent of the petitioner. Rather the intention of the petitioner as can be inferred from the very conduct and the arguments advanced herein-above is that the petitioner was not interested in protecting the shelter of the respondent/wife and the daughter. As the petitioner intentionally has not complied with the order impugned dated 2nd November, 2017 passed by the Family Court thereby depositing the amount of installments so as to discharge the loan liability. On one hand the petitioner was not willing to pay the loan liability and on the other hand, he is claiming that the loan liability ought not to have been returned by the respondent/wife. The very conduct of the petitioner speaks voluminous intention of the petitioner.

8. In this background, the claim of the respondent that the respondent be granted liberty to take steps in accordance with law for recovery of the loan amount from the petitioner appears to be quite justified. In view of above, there is no merit in the present petition. The petition as such stands dismissed.

9. The pending interim application also stands disposed of.

10. Liberty to the respondent/wife to move against the petitioner for recovery of the amount of loan which she has already paid, which claim be dealt with in accordance with law.

[NITIN W. SAMBRE, J.]