

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1014 WRIT PETITION NO.1333 OF 2017

**HOUSING DEVELOPMENT FINANCE CORPORATION LTD THROUGH
ITS AUTHORIZED OFFICER AND OTHERS
VERSUS
DILIP UTTAMRAO SURYAWANSHI AND OTHERS**

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Advocate for Petitioners : Mr. S.V. Adwant
Advocate for Respondent No.1 : Mr. H.P. Randhir
Advocate for Respondent No.2 : Mr. A.A. Kokad
Advocate for Respondent No.3 : Mr. A.G. Talhar

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**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 25-04-2023

PER COURT :

. The petitioners, a Housing Development Finance Corporation (for the sake of brevity, 'HDFC') have questioned the order dated 08th June, 2015 passed by the Presiding Officer, Debt Recovery Tribunal, Aurangabad whereby directions are issued to petitioners to comply the order dated 28th May, 2013 passed in S.A. No. 15 of 2011 by the Debt Recovery Tribunal, Aurangabad (for short "D.R.T.")

Few facts necessary for deciding the present petition are as under:

2. Respondent No.1 has borrowed loan of Rs.Two Lakh

Fourty Thousand from HDFC for purchase of a flat, details of which are as under:

Flat in Shivpriya Apartment,
Omshanti Nagar, Gut No.2/2-B/2,
Plot No.13, Block No.1 admeasuring
68.50 sq. meters, Pimprala, Tq. &
Dist. Jalgaon.

3. The aforesaid flat was purchased by respondent no. 1 after availing the loan facility of Rs.Two Lakh Fourty Thousand as against the costs of Rs.Two Lakh Eighty Thousand. The repayment was to be done in 15 years.

4. It is the case of petitioners that respondent no.1 repaid Rs.One Lakh Fifty Thousand and thereafter committed defaults. As a sequel of above, petitioners have taken physical possession of the aforesaid property allegedly after following the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Hereinafter referred to as the 'SARFAESI Act').

5. Respondent No.1 feeling aggrieved approached the D.R.T. vide S.A. No.15 of 2011, which was decided on 28th May, 2013 in favour of respondent no.1. Since petitioners have auctioned the property before the initiation of proceedings before the Debts

Recovery Tribunal which was purchased by respondent no.2 and respondent no.2 in turn has transferred the said property to respondent no.3, both were impleaded as party before the D.R.T.

6. D.R.T. while dealing with the claim of respondent no.1 has issued direction to petitioners to restore the possession of the flat in question to respondent no.1. We are informed that in compliance with the order of D.R.T., respondent no.1 has deposited the amount as has been directed and which was due and payable to petitioners. Pursuant to the aforesaid, petitioners have taken out I. A. No. 559 of 2013, which was decided by the impugned order dated 8th June, 2015, wherein petitioners were directed to comply the order of the D.R.T. delivered on 25th May, 2013.

7. We have heard learned counsel appearing for the respective parties at length.

8. Mr. Adwant, learned counsel appearing for petitioners so as to end this litigation, on instructions, submits that petitioners have deposited an amount of Rs. Sixteen Lakh in this Court. It is further claimed that an amount of Rs. Nine Lakh shall be deposited in this court in any case by 03rd May, 2023. He would urge that in view of

above, the respondent No. 3 or his legal heirs i. e. respondent Nos. 3(a) to 3(g) can withdraw the aforesaid amount and transfer the flat in question in favour of the respondent No. 1 in whose favour D.R.T. has passed an order on 25th May, 2013. So also compliance of order dated 08th June, 2015 impugned herein can be reported. He would as such urge that aforesaid steps on behalf of the petitioners are taken so as to facilitate the compliance of the aforesaid orders. He would further urge that petitioners are extending consent for transfer to be executed by the respondent No. 3 to the respondent No. 1 of the above flat.

9. The fact remains that Parashram Mangilal Verma – respondent no. 3 who has expired, purchased the property mentioned herein above from respondent no. 2 - Sanjay Babulal Darda. The legal heirs of respondent no.3 are on record, who are pursuing the present proceedings. Rightly pointed out by Mr. Sunil Parashram Verma, legal heir of deceased Parashram that he is authorized for and on behalf of respondent no. 3(a) to 3(g) to give following undertaking and to act on compliance with same provided petitioners pay an amount of Rs. Twenty Five Lakh to respondent Nos. 3(a) to 3(g).

10. Mr. Sunil Verma has placed on record an undertaking to the effect that he is willing to surrender the possession of the property which was purchased by his father from respondent no.2 and is willing to handover the possession of the aforesaid flat to respondent no.1. He has submitted that he shall adhere to the conditions as are incorporated in the order dated 08th June, 2015 and order dated 28th May, 2013.

11. It is claimed by learned counsel for respondent no.3 that towards full and final settlement an amount of Rs.Twenty Five Lakh is accepted. Rupees Sixteen Lakh out of the above is already deposited in this court is sought to be permitted to be withdrawn and the balance amount of Rs.Nine Lakh after the deposit of the same. By way of aforesaid undertaking Mr. Sunil Verma, one of the legal heirs of the respondent No. 3 on behalf of respondent Nos. 3(a) to 3(g) has undertaken to hand over the vacant and peaceful possession of the flat in question to the respondent No. 1 on 31st May, 2023 free from all encumbrances.

12. Learned counsel for the respondent No. 1 submits that he has no objection for the aforesaid consent being extended by the petitioners and the respondent Nos. 3(a) to 3(g) as long as he is

restored possession of the flat in question.

13. We have considered rival submissions of the learned counsel for respective parties.

14. Since the statement is made on behalf of the learned counsel for the petitioners about deposit of amount of Rs. Twenty Five Lakh on instructions from the officers who are present in the Court and as the learned counsel for respondent Nos. 3(a) to 3(g) has also made a statement in regard to handing over possession by 31st May, 2023 subject to receipt of entire amount of Rs. Twenty Five Lakh from the petitioners, both these statements are accepted as an undertaking to this Court. The written undertaking furnished by Respondent No.3 is also accepted.

15. Learned counsel for the respondent No. 3(a) to 3(g) and the respondent No. 1 shall share the expenses towards the charges to be incurred for registration, stamp duty, lawyers charges, if, any for executing conveyance in favour of the respondent No. 1 by the respondent No. 3 to which the petitioners have already consented for.

16. In view of above, we hereby permit the respondent Nos.

3(a) to 3(g) to withdraw the amount of Rs.Nine Lakh after the execution of conveyance and handing over possession of the suit flat to respondent no.1.

17. After the aforesaid reconveyance deed by respondent no.3 is executed in favour of respondent no.1 and on respondent no.1 getting possession of the flat from respondent no.3, petitioners will be at liberty to withdraw the amount deposited by respondent no.1 with accrued interest in the Debts Recovery Tribunal, Aurangabad.

18. In the light of the above, writ petition is **disposed of**.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)

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