

Santosh

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

WRIT PETITION NO. 15428 OF 2022

SANTOSH
SUBHASH
KULKARNI

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Date: 2023.07.19
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Vilas Vishwas Lad

...Petitioner

Versus

The State of Maharashtra and ors.

...Respondents

Mr. V. S. Kapse, a/w Upendra Mahadik, i/b Fast Track Legal,
for the Petitioner.

Mr. Sopan Dumbre, for Respondent Nos.2 and 3.

Mr. Akshay Shinde, AGP for the State "B" Panel.

CORAM: N. J. JAMADAR, J.

DATED : 17th JULY, 2023

Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 22nd November, 2022 passed by the learned Additional Chief Metropolitan Magistrate under Rule 107(11)(d-1)(vi)(a) of the Maharashtra Co-operative Societies Rules, 1961, whereby the Special Recovery Officer was authorized to take over possession of the Flat/Tenement No.4 situated at Ground Floor, Mahatma Phule Sadan, Sakharam Balaji Pawar, Curry Road (West), Mumbai, ("the subject premises").

3. When the petition was listed before the Court on 15th December, 2022, after considering the peculiar facts of the case, this Court had passed the following order:

“3. The records reveal that Respondent No.5 – MHADA allotted the subject flat to Respondent No.4 – Ravikiran Pandurang Kshirsagar. It is not in dispute that the allotment letter imposed restriction on sale/transfer of/or creation of any assignment in respect of the flat. Respondent No.4 mortgaged the said flat to Respondent No.2 without obtaining permission from MHADA and subsequently sold the flat to the Petitioner vide deed of sale dated 11/12/2019. The Respondent No.5 – MHADA has regularised sale of the flat in favour of the petitioner.

4. The records reveal that Respondent No.4 – principal borrower failed to repay the amount borrowed from Respondent No.2. Hence, Respondent No.2 commenced the recovery proceedings under the provisions of the MCS Act. The records prima facie reveal that the Respondent No.2 – Bank was aware of the sale transaction in respect of the flat which was mortgaged in its favour. It is also seen that Respondent No.4 had issued cheque in favour of the Bank towards repayment of loan amount of Rs.20,00,000/-. It is stated that Respondent No.2 did not encash the cheque on an oral assurance given by the principal borrower that he would pay the entire amount. It is also stated that the Petitioner has already filed a S. C. Suit (L) No.3137 of 2022, which is pending before the City Civil Court, Greater Bombay.

5. Considering the above facts and circumstances, operation and execution of the impugned order is stayed till the next date of hearing. Respondent No.2 to file reply, if any, on or before the next date with advance copy to the other side.”

4. The learned Counsel for the petitioner invites the attention of the Court to the plaint in SC Suit (L) No.3137 of 2022 instituted by the petitioner in the City Civil Court seeking a declaration that the registered Agreement for Sale dated 11th December, 2019 executed by respondent No.4 – defendant No.4

in respect of the subject premises is legal and valid and that the mortgage created in respect of the suit premises in favour of respondent No.2 Vishal Junnar Sahakari Patpedhi Maryadit, Mumbai, is not legal, valid and binding on the petitioner – plaintiff. In the said suit, the petitioner has taken out Notice of Motion.

5. The Court is informed that the defendant Society is yet to file reply to the said Notice of Motion.

6. As the questions, as to whether the petitioner is entitled to raise objection to attachment and the subject premises is not liable to be sold in execution of the Recovery Certificate issued in favour of respondent No.2 Society are *subjudice*, in the above-numbered suit, it would be expedient to dispose of this petition by continuing the interim protection for a limited period.

7. Respondent Nos.2 and 3/defendant Nos.1 and 2 in SC Suit (L) No.3137 of 2022 shall file reply to the Notice of Motion within a period of four weeks from today.

8. Rejoinder, if any, be filed within a period of two weeks thereafter.

9. The learned Judge, City Civil Court, is requested to make an endeavour to decide the Notice of Motion and SC Suit (L)

No.3137 of 2022 as expeditiously as possible and, preferably within a period of two months from the date of filing of the affidavit-in-rejoinder.

10. Till the decision of Notice of Motion, the interim protection granted by this Court shall continue to operate.

11. Petition stands disposed.

[N. J. JAMADAR, J.]