

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3618 OF 2022

IIFL Home Finance Ltd and Anr. ... Petitioners
vs.
State of Maharashtra and Ors. ... Respondents

Ms. Disha Karambar S. Mulgaonkar with Ms. Priya Rita i/b Disha Karambar & Associates for Petitioner.

Mr. Rahul Sharma, Representative of Petitioner present.

Mr. Amit Shastri, AGP for Respondent No.1 -State.

Mr. Sunil Kadam for Respondents No. 2 to 5.

Mr. Ajinkya Udone for Respondents No. 6 and 7.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE : 12 APRIL 2023

P.C. :

. Heard learned Counsel for the parties.

2 By this Petition, Petitioner seeks following prayers:-

“b) That this Hon’ble Court may kindly be pleased after going into legality and propriety and substantively of the case to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 a/w 227 of the Constitution of India directing Respondent No. 6 and 7 to grant entry/access to the authorized representatives of the Petitioner No.1 in respect of (1) Pent House/Flat No. 2201, 22nd Floor, Millenium

Court, Oshiwara, Andheri, Mumbai, Maharashtra, (2) Pent House/Flat No. 2022, 22nd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra, (3) Pent House/Flat No. 2301, 23rd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra, (4) Pent House/Flat No. 2302, 23rd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra.

c) This Hon'ble Court may kindly be pleased to pass an Order and a direction directing Respondent Nos. 1,6 and 7 to take all possible steps for the Petitioners therefore by invoking the provisions of Articles 226 a/ w 227 of The Constitution of India, 1950 thereby prefer this Petition and seeks an Order and a direction directing Respondent Nos. 1, 6 and 7 to take all possible steps for granting entry/access of the secured asset to the Petitioner No.1 and its representatives situated (1) Pent House/Flat No. 2201,22nd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra, (2) Pent House/Flat No. 2022, 22nd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra, (3) Pent House/Flat No. 2301, 23rd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra, (4) Pent House/Flat No. 2302, 23rd Floor, Millenium Court, Oshiwara, Andheri, Mumbai, Maharashtra.

The prayers which are sought against Respondent No. 1-State of Maharashtra, Respondent No. 6 – Co-operative Society and Respondent No. 7- Manager of Co-operative Society.

3 Petitioner is a Finance Company, secured creditor of assets described in the Petition, which are residential premises, situated in the co-operative society-Respondent No.6. According to the

Petitioner, Petitioner has obtained possession by making an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) and Petitioner has been put in possession by the District Magistrate.

4 To a specific query as to whether Petitioner is in possession or not, the learned Counsel for the Petitioner asserts that Petitioner is in possession. Therefore, what is sought is a injunction against private parties that the Co-Operative Society and its manager should be restrained in respect of the Petitioner’s possessory right. Petitioner contends that the Respondents no. 6 and 7 have a public duty to perform and therefore, they are amenable to writ jurisdiction. Under which statute such a public duty is placed on the Respondents No. 6 & 7 qua the Petitioner is not pointed out for issuance of a mandamus.

5 Even assuming there is a public duty on Respondents No. 6 & 7, a writ Petition under Article 226 of the Constitution of India in these facts is not an appropriate remedy. Learned Counsel for the borrower has disputed the factual assertions and states that Petitioners are not entitled to take any action. It is quite clear that for consideration of the relief of injunction, several disputed facts will arise for adjudication, which will require evidence. If the Petitioner is in possession, Petitioner would have its remedies open

in the appropriate Courts of law. Keeping contentions of the parties open in case the Petitioner, approaches the competent Court/forum, Writ Petition is disposed of.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

Digitally
signed by
NIKITA
YOGESH
GADGIL
Date:
2023.04.20
10:58:39
+0530