IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 8126 OF 2024

AREFA PARVEEN SATTAR SHAIKH
VERSUS
UNION BANK OF INDIA AND ANOTHER
...

Mr. Suhas P. Urgunde, Advocate for the Petitioner
Mr. A. A. Mishra, Advocate for Respondents

CORAM	:	RAVINDRA V. GHUGE & Y. G. KHOBRAGADE, JJ.
DATE	:	6th August, 2024

ORDER:

1. This matter was heard on 2nd August, 2024, 5th August, 2024 and again today.

2. The Petitioner is a lady, who has approached this Court praying for exercising our extraordinary jurisdiction under Article 226 of the Constitution of India, for saving her from being thrown on the street on account of the Bank intending to take the physical possession of her residential property.

3. The competent authority has passed an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 27.11.2023 and the possession notice dated 05.07.2024, has been issued by the Court Commissioner. The physical possession is scheduled to be taken tomorrow.

4. The Petitioner submit that while she was leading a happy married life with her husband, who is one of the Directors on M/s Vatsala Electrical (herein after referred to as the borrower), she purchased three immovable properties with the financial support of her father. These three properties stood in the name of the Petitioner. One of the properties viz. Plot No.A-2/4, Old MIDC, Baswantnpur, Latur admeasuring 1000 square meter with the built up area of 86.25 square meters, was already auctioned and a sale certificate was issued on 18.08.2023. The sale proceeds accounted for Rs. 81,13,000/-. As in August, 2013, the outstanding amount towards the borrower was Rs.22,07,08,777.98. The Petitioner is one of the guarantors to the loan facilities availed by the borrower.

5. The second property, identified as residential Plot No.4, M.H. No.R-3/216/9-C, out of CT Survey No. 10709, admeasuring 371.74 square meters, is at Mehbubnagar, Latur. It was also delivered to the Bank and the physical possession is with the Bank. The said property is yet to be auctioned by the Court Commissioner.

6. The Petitioner is residing in the Writ Property along with two daughters and a tenant. That is the only immovable property that she has. Presently she is estranged from her husband, is the contention. As on date, no proceedings before any Court with regard to a marital discord, have been initiated.

7. The learned Advocate for the Bank, Shri Mishra has vehemently opposed this Petition, on instructions. He submits that the Petitioner can approach the DRT even today and move an application for interim orders, keeping in view that the physical possession of the house property is to be taken tomorrow. During the course of the hearing in this matter, on the dates mentioned above, the learned Advocate for the Petitioner submitted on instructions that the Petitioner is taking financial assistance from her father and is willing to deposit Rs.50 lakhs with the Bank in order to save her residential property. If the said property is taken away, the Petitioner would be rendered to the streets.

8. Shri Mishra submits that when a statutory remedy is available, the Petitioner ought not to approach this Court and this Court may decline to consider the Petition. He further submits that yesterday, the Petitioner has deposited Rs.50 lakhs with the Bank. This is confirmed and there is no dispute. However, the Bank is not willing to extend any consent in this matter for granting any protection to the Petitioner.

9. We are faced with a peculiar situation. Had we noticed any ulterior or oblique motive which could have possibly been attributed to the conduct of the Petitioner, we would not have entertained this Petition. We cannot ignore that one immovable property standing in the name of the Petitioner, has already been auctioned, as noted above. The

second immovable property is also with the Bank, since the Petitioner is divested of the physical possession. Insofar as the residential property/writ property is concerned, the Petitioner has proved her bonafides of depositing Rs.50 lakhs with the Bank. That was only by way of an assurance to the Bank that the Petitioner does not have ill-intentions. The offset price of the writ property is Rs.39.40 lakhs as per the valuation carried out in December, 2020.

10. It is in the above peculiar facts and circumstances of the case in which the bonafide of the Petitioner are explicit and if she loses the residential property, she, along with her two daughters, would be on the streets, that we are entertaining this Petition to a limited extent.

11. Taking into account the above factors, **this Writ Petition is disposed off** with the following directions:

(a) The Petitioner would prefer a proceeding under SARFASI Act on or before 21st August, 2024. An application for interim relief/ protection would be filed along with the said proceeding.

(b) The Respondent Bank before us would enter it's affidavit in reply/written statement within 15 days from the date of the receipt of the notice of the Tribunal.

(c) After the written statement/affidavit in reply is filed by the Bank, the parties would advance their oral submissions within 15 days thereafter, on the interim application and the learned Tribunal would thereafter pass an order within 15 days on the merits of the interim application.

(d) Until such interim order is passed by the learned Tribunal, the physical possession of the residential property of the Petitioner, as mentioned in the Writ Petition, shall not be taken. The Petitioner would retain the possession subject to the interim order of the learned Tribunal.

(e) Any time in future, if a situation arises that the Petitioner's immovable property as mentioned in the Writ Petition, is auctioned, the amount of Rs.50 lakhs deposited by the Petitioner shall be returned to the Petitioner without interest, before the date of the auction.

(f) By consent of the parties, in the event the auction of the writ property is carried out, the Petitioner would be at liberty to participate in the auction proceedings.

12. Needless to state, all contentions of the litigating parties are kept open.

13. Since this order has been passed in the peculiar facts and circumstances of this case, the same shall not be cited as a precedent in any proceeding.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan