

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.286 OF 2024

Ashok Kumar

.. Petitioner

Versus

Nil

.. Respondent

- Mr. Satish J. Agarwal a/w. Ms. Dhara Shah, Advocates for
 Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 06, 2024

P.C.:

- 1.** Heard Mr. Agarwal, learned Advocate for Petitioner.
- 2.** The present Writ Petition was heard by me on 23.02.2024
 and the following order was passed:-

“1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 23.02.2024. Heard Ms. Majithia, learned Advocate for Petitioner.

3. Urgency is stated in the praecipe on the ground that the challenge is maintained to the order dated 10.01.2023 passed below Exh. 1 in an execution proceedings by the City Civil Court. It is seen that pursuant to the said order, all statutory steps were taken by following the due process of law resultantly leading to passing of the order dated 15.09.2023.

4. Today a grievance is made that since the Writ Petition has been filed to challenge the order dated 10.01.2023, all further steps should be halted and the Writ Petition should be listed immediately. The facts of the case are clearly depicted in the order dated 15.09.2023 whereby the loan was sanctioned for Rs. 1.3 crore in 2011. The same having not been paid, the subject flat has been classified as non-performing asset on 24.03.2021 and thereafter SARFAESI proceedings have been invoked and taken to its logical end by following the due process of law. In the order dated 15.09.2023 it is stated that there is already an outstanding amount of Rs. 51,94,334.72 due and payable as on 04.03.2022. Court Commissioner has been appointed.

5. In the praecipe which is filed today, a plea is made that Petitioner is in dire need of finance accruing out of the sale of

the said property in order to cater to the needs of his brother who is suffering from Extrapontine Myelinolysis disease (a form of paralysis). The praecipe states that he is in fear of losing the possession of the suit property.

6. Ms. Majithia would submit that Appeal against order dated 10.01.2023 is also filed and is being prosecuted. The facts of the case do not persuade me to grant any relief to the Petitioner since the recovery procedure has been followed by following the due process of law. I cannot stay the further proceedings in these facts and circumstances. Due process of law has to be followed. Nevertheless all contentions of the Petitioner will be kept open as and when the Writ Petition shall be heard by this Court. The request made in the praecipe is rejected. Praecipe is disposed.”

3. The present Writ Petition was once again mentioned on 26.02.2024 due to urgency expressed and the following order was passed:-

“1. Not on board. Mentioned. Taken on board.

2. Perused the praecipe dated 26.02.2024. Heard Ms. Shah, learned Advocate for Petitioner.

3. This Petition is filed to challenge the order dated 10.01.2023 passed by the learned Trial Court rejecting leave sought by the Petitioner for sale of an immovable property. The facts in this case are curious and important. The immovable property belongs to a mentally ill person and the Petitioner has been appointed as a guardian / next friend of the said owner of the property by the Trial Court.

4. Ms. Shah would submit that this property was bought by the original owner and he had availed of a loan for buying the said property. Learned Trial Court passed order dated 16.12.2021 appointing Petitioner as next friend and guardian so as to take steps for sale of the property but with a caveat that he shall obtain leave of the Court before sale. Ms. Shah would submit that Petitioner arranged to sell the flat and approached the learned Trial Court for seeking such leave since the outstanding of the Bank were mounting and increasing. This leave was rejected by the learned Trial Court. One of the ground being informed to me is that the Petitioner had failed to bring a prospective buyer. Ms. Shah would submit that there is urgency to sell the property because of the outstanding loan and interest as also due to the unpaid bank installments and therefore a challenge is maintained to the order.

*5. Since there is no contesting Respondent in the present cast, list the Petition on **29th February, 2024** for disposal.”*

4. In view of the exigency which has been stated and mentioned in the aforesaid orders, the Writ Petition is finally heard by me today at the insistence of Mr. Agarwal. Rather the Petition deserves immediate hearing and disposal.

5. The Writ Petition takes exception to the order dated 10.01.2023 passed by the City Civil Court at Mumbai in Miscellaneous Application No.51 of 2022 in Mental Health Petition No.99 of 2021. The Application below Miscellaneous Application No.51 of 2022 sought leave of the Court to sell the immovable property standing in the name of one Mr. Dilip Kumar. There are two immovable properties i.e. flats belonging to Mr. Dilip Kumar.

6. At the outset, Mr. Agarwal has drawn my attention to the judgment dated 16.12.2021 passed by the learned Trial Court allowing the Mental Health Petition No.99 of 2021. That judgment dated 16.12.2021 is at page No.54 of the Writ Petition.

7. By virtue of that judgment, the Petitioner – Mr. Ashok Kumar is appointed as ‘total support guardian’ for Mr. Dilip Kumar (his younger brother) and manager of his estate under Section 14(1) of the Rights of Persons with Disabilities Act, 2016. It also gives consequential directions to file returns of properties of Mr. Dilip Kumar at the end of every financial year and to take prior permission of the City Civil Court before transfer of any immovable property

belonging to Mr. Dilip Kumar.

8. As a consequence of the judgment dated 16.12.2021 and in view of the mounting medical expenses, rather exorbitant medical expenses of Mr. Dilip Kumar himself and in view of the outstanding Society dues of the two immovable flats belonging to Mr. Dilip Kumar and outstanding loan amounts payable to Non Banking Financial Company (for short 'NBFC') and IndusInd Bank in respect of loan availed by Mr. Dilip Kumar, the guardian i.e. Petitioner before me who is the elder brother of Mr. Dilip Kumar filed an Application being Miscellaneous Application No.51 of 2022 for seeking leave of the Court to permit him to sell the two immovable flats namely Flat No.1201 situated in Juhu Harshal Co-operative Housing Society Limited, Samarth Ramdas Marg, J.V.P.D. Scheme, Vile Parle (West), Mumbai – 400 049 and Flat No.402 situated in Green Blaze Co-operative Housing Society Limited, CTS No.161/S, Plot No.1, Juhu Versova Link Road, Andheri West, Mumbai 400053.

9. He has taken me through the expenses and outstanding details which are appended to the present Petition. All medical details of Mr. Dilip Kumar alongwith documentary evidence are stated in the Application as also appended to the Application which are placed in the Writ Petition.

10. The outstanding loan amount in respect of both the flats as informed by Edelweiss and IndusInd Bank are also placed on record at page No.90 and page No.123 of the Writ Petition. The Society outstanding dues are also placed on record by placing the Society outstanding maintenance receipts from page No.89, Exhibit-H of the Writ Petition onwards in respect of both the flats.

11. It is seen that substantial outstandings are due and payable to the NBFC [Edelweiss Ltd.] in respect of Flat No.1201 situated in Juhu Harshal Co-operative Housing Society Limited, Samarth Ramdas Marg, J.V.P.D. Scheme, Vile Parle (West), Mumbai – 400 049 and to IndusInd Bank in respect of Flat No.402 situated in Green Blaze Co-operative Housing Society Limited, CTS No.161/S, Plot No.1, Juhu Versova Link Road, Andheri West, Mumbai 400053.

12. These outstanding are in all probability in excess of Rs.50,00,000 to Rs.60,00,000/- and precise computation is not available since it is approximately based on the record, rather figures of the year 2021 which are made available in the Petition.

13. Mr. Agarwal would submit that statutory action under the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '**SARFAESI Act**') has already been initiated by IndusInd Bank and the NBFC, however the same has not been taken to its logical end in view of the judgment

dated 16.12.2021 passed in the Mental Health Petition No.99 of 2021 by the City Civil and Sessions Court, Bombay and pendency of the present Writ Petition. He would submit that on behalf of the borrower i.e. Mr. Dilip Kumar, the Petitioner has already approached both the Institutions and apprised them about the pendency of the present Writ Petition and the reliefs prayed for in the present Writ Petition.

14. It is seen that the Petitioner – Mr. Ashok Kumar is one of the brother rather real brother of Mr. Dilip Kumar. There are three other brothers namely Manoj Kumar Sinha, Ravindra Kumar Sinha and Surendra Kumar Sinha and four sisters namely Ms. Bimla Kumari, Renuka Chaudhary, Kamla Kumari Singh and Anju Kumari Sinha who have given their Consent Affidavits which are appended at page Nos.127, 129, 131 and 133 of the Writ Petition. These Consent Affidavits clearly record that sisters do not have any objection if properties of Mr. Dilip Kumar are sold in order to cover his expenses as also treatment and to clear his outstanding and sisters have all renounced their rights in the same. The consent of the brothers is not given. They did not even appear before the Trial Court where the Petition was filed despite being served. In effect it is seen that these 3 brothers have shirked their responsibility to take care of their medically unfit brother.

15. Mr. Dilip Kumar though 50 years old is a bachelor suffering from Extrapontine Myelinolysis disease since long resultantly leading to impaired thinking, weakness and paralysis of his entire body, impaired sensation and resultantly leading to permanent disability. He is completely bedridden and is surviving on PEG feeds besides being cognitively impaired, incapable of any decision making and / or dealing with his properties. In view of the judgment dated 16.12.2021 appointing Petitioner as his guardian having been passed on merits there is no reason to interfere with that order as it has been passed correctly in my opinion on the principal issue.

16. There are two fold submissions made by Mr. Agarwal to enable the Petitioner to sell the two immovable properties namely flats delineated herein above:-

- (i) That Mr. Dilip Kumar requires 24 X 7 permanent medical care which is delineated in detail due to his present neurological status and he is presently cared for by the Petitioner at Bangalore at his own expenses which are now drying out, and
- (ii) That the two properties belonging to Mr. Dilip Kumar have substantial outstandings of the Society, Bank, NBFC etc. which have to

be paid to arrest the mounting interest component.

17. It is seen that on 28.04.2022, paper publication was effected pursuant to orders of the Court in order to effect service on the other three brothers of Mr. Dilip Kumar namely Manoj Kumar Sinha, Ravindra Kumar Sinha and Surendra Kumar Sinha who despite service of the notice of the original Mental Health Petition remained absent and hence did not raise any objection. There was no response to the above public notice by the three brothers.

18. Consequently, Mr. Agarwal would submit that if the Petitioner is permitted to sell the two flats belonging to Mr. Dilip Kumar, the need and necessity of repaying the outstanding loan amount as also to clear the Society debt will have to be considered on priority. Considering that the original title deeds are with the Bank and NBFC and more importantly the outstanding dues of both the Societies will have to be cleared for obtaining its No-objection Certificate, Mr. Agarwal is right.

19. Mr. Agarwal would also submit that he has instructions to inform the Court that if Court is not inclined to allow Petitioner to sell these two flats then the Court can appoint the Receiver or any Administrator to do the needful, since the Petitioner is really concerned about not only the health of Mr. Dilip Kumar but also the

fact that due to he taking his care, he has incurred enormous medical expenditure and now he is in fact inundated with repeated notices from the Societies as also the Bank and NBFC for clearance of the outstanding liabilities.

20. I have perused the grounds in the Writ Petition and also seen the Annexures and Exhibits appended thereto.

21. It is seen that the Petitioner has been extremely meticulous in placing on record all relevant and necessary details of expenditure incurred and outstanding amounts as also the medical treatment of Mr. Dilip Kumar by referring to and relying upon the documentary evidence and invoices.

22. *Prima facie*, I have no reason whatsoever to disbelieve them and the averments made in the Writ Petition which clearly are to the effect that the Petitioner is not only taking care of Mr. Dilip Kumar but despite being his older brother has also himself incurred substantial expenses in taking his care at the outset from his own personal account.

23. Be that as it may, I have impressed upon Mr. Agarwal that permission to sell the two flats can be granted by this Court subject to the outstandings of the Societies, the Bank and the NBFC been cleared on priority and only thereafter the balance can be held by the Petitioner in a separate Fixed Deposit account and the details of which

shall have to be informed to the learned Trial Court in the yearly statement as directed by the learned Trial Court in operative clause No.(3) of its judgment dated 16.12.2021. Mr. Agarwal would submit that Petitioner shall abide by whatever directions and orders that are passed by this Court in the interest of justice.

24. Not only due to the aforesaid reasons but also due to the reasons stated in the impugned order the Court cannot undertake the exercise to ascertain the prices of flats and seek documentary evidence from the prospective purchasers in the manner in which it is sought for by the impugned order.

25. There is also no reason for the Court to seek details of the proposed transactions to be brought on record to examine whether the transactions are in the interest of Mr. Dilip Kumar in advance. The condition put forth by the Court to place on record the names of the persons that if proposed transactions are to be made and terms and conditions stated and including prices of the flats is also onerous in the facts of the present case as putting such conditions will never lead to disposal of the two flats. The reason for putting such conditions and to be extra careful is clearly seen because both the flats are extremely valuable in terms of their market value. What Court has not taken into account is the fact that in view of both the flats having been declared as non performing assets, the dues of the Bank and the NBFC are

mounting geometrically to the disadvantage of Mr. Dilip Kumar and if immediate permission is not granted to sell the two flats, it is clear and evident that much lesser amount will be finally available for Mr. Dilip Kumar's medical treatment also.

26. There is no doubt that check will also have to be exercised, but the extent and parameters of such a check need to be defined so as to enable the Petitioner to sell the two flats or rather one flat at a time and place the details before the learned Trial Court in the yearly statement so as to enable the learned Trial Court to consider the same and pass any further directions if so required by the Petitioner.

27. In the facts and circumstances of the present case, it is seen that if the Trial Court starts evaluating the sale of each flat it is bound to take a lot of time and it may even deter prospective purchasers to buy the flats if their names are required to be informed to the Trial Court. The circumstances in which the Mental Health Petition No.99 of 2021 was filed originally in the year 2021, the judgment dated 16.12.2021 passed by the Trial Court and Application now made by the Petitioner will require the Court to take a more practical and humane approach in allowing sale of the two flats in the open market by following the due process of law. It is seen that due to the encumbrances, the Petitioner will have to involve the Bank / NBFC and both the Societies in the sale of the two flats and this is not an

easy task. In view of all the above reasons, the impugned order dated 10.01.2023 is quashed and set aside, subject to directions given in this order.

28. Further it is seen that value of both these flats is running into several crores of rupees. The outstanding amounts payable to the Bank and NBFC as also both the Societies are placed on record though upto the years 2021 – 2022. If a rough calculation is made the outstandings, including dues of the Societies can practically come to between Rs.1.50 Crores to Rs.2 Crores. This rough calculation is based on figures available in the Writ Petition. The upto date details of outstandings will have to be called for for effecting sale of the two flats.

29. Present Writ Petition therefore needs to be disposed of by taking a practical approach and giving appropriate directions to the Court Receiver, High Court, Mumbai to dispose of the two flats in order to relieve the Petitioner of the responsibility that he has already undertaken in so far as looking after his younger brother Mr. Dilip Kumar and his medical treatment is concerned. This will ease the pressure on the Petitioner, he will have more time to devote to Mr. Dilip Kumar and there will not be any questions asked about sale of the two flats as due process shall be followed.

30. In view of the above observations and findings, I proceed to therefore pass the following order and directions in the present Petition in exercise of writ jurisdiction under Article 226 of the Constitution of India in the facts and circumstances of the present case which require immediate intervention of this Court:-

- (i) Court Receiver, High Court, Mumbai is appointed as Receiver of Flat No.1201 situated in Juhu Harshal Co-operative Housing Society Limited, Samarth Ramdas Marg, J.V.P.D. Scheme, Vile Parle (West), Mumbai – 400 049 and Flat No.402 situated in Green Blaze Co-operative Housing Society Limited, CTS No.161/S, Plot No.1, Juhu Versova Link Road, Andheri West, Mumbai 400053 with immediate effect;
- (ii) Court Receiver, High Court, Mumbai is directed to immediately undertake the process of sale of the aforesaid two flats as directed by this Court in this order and strictly in accordance with law by a public auction;
- (iii) Court Receiver, High Court, Mumbai on being informed with an authenticated copy of this order shall immediately appoint Mr. Amol Shetgiri of M/s. Shetgiri & Associates as Valuer to conduct a survey of

both the aforesaid flats get a valuation report prepared indicating the present day market value of both flats. Said report shall be got prepared within a period of 15 days from today. For that purpose, Court Receiver, High Court, Mumbai shall, if required, accompany the Valuer to the said flats alongwith the Petitioner. I am informed by Mr. Agarwal that keys of both the flats are with the Petitioner. Petitioner is therefore directed to depute a responsible person along with keys of both the flats to enable the Court Receiver and the Valuer to undertake inspection of the said flats so as to get the valuation report prepared as early as possible. The key of the two flats shall be deposited with the Court Receiver as the flats are new custodia legis. The valuation report prepared by the Valuer shall indicate the reserve price of both flats since the flats are required to be sold by public auction through the Court Receiver. The said Report and reserve price shall be submitted to the Court Receiver so that Court Receiver can set the said price as the reserve price in the public advertisement that will have to be issued in two local newspapers for conducting public auction of the two flats thereafter. Copy of the original valuation

report alongwith Valuer's Invoice / Bill shall be filed with the Court Receiver. Initially the Valuer's Bill for the Valuation Report shall be paid by the Petitioner and the same shall be reimbursed upon the sale of the two flats to him on priority. The Valuer's Bill / Invoice shall be cleared by the Petitioner within one week from the date of submission of the Valuation Report and Invoice with the Court Receiver;

- (iv) Court Receiver is thereafter directed to issue public advertisement in two local newspapers having wide circulation in respect of sale of both flats and call for sealed bids and carry out the process of sale of the two flats in accordance with law by following the due process of law for such sales conducted by the Court Receiver in the regular manner;
- (v) After bids are received, Court Receiver shall open the bids on the appointed date before all bidders and allow the bidders to bid amongst themselves subject to the bids being above the reserve price and thereafter prepare a Status Report and place the same before this Court as early as possible and seek appropriate orders for confirmation of sale from this Court. In the

process of carrying out the sale of the two flats, Court Receiver shall simultaneously interact with the bankers i.e. IndusInd Bank and Edelweiss (NBFC) who are the financial institutions from whom Mr. Dilip Kumar had borrowed monies for the purpose of the aforesaid flats. Court Receiver shall ascertain availability of the original title deeds of both these flats with these limitations and both these financial institutions are directed by this Court to give a photo copy or the photocopies of title / claim of documents of these two flats to the Court Receiver to enable him to take steps for sale of the flats. Simultaneously the Court Receiver shall also approach both the Co-operative Housing Societies where these two flats are located and situated and acquire upto date details of the outstanding amounts due and payable to the Society as also property tax in respect of both these flats. The Chairman / Secretary of both these Co-operative Housing Societies are directed by this Court to give a detailed breakup of the principal outstanding amount and the interest component thereon separately to the Court Receiver on their respective letterheads so as to enable the Court Receiver to factor the said

outstanding amounts against the sale proceeds during disbursement;

- (vi) At this Stage Mr. Agarwal has also informed me that it is only yesterday that he was informed about some outstanding income tax liability of approximately Rs. One Crore against Mr. Dilip Kumar. Details of the said income tax liability shall be furnished by Mr. Agarwal to the Court Receiver and the same shall also be incorporated in the status Report;
- (vii) Court Receiver shall prepare a conjoint statement of the total liability of the bank and financial institutions, Co-operative Housing Societies, Income Tax Department and all other liabilities that will be informed to him and place the same before the Court in his Status Report at the time of seeking confirmation of the sale of the two flats;
- (viii) It is clarified that this Court shall disburse the amounts that shall be received from the sale proceeds after the sale of the aforesaid two flats is completed first to the Co-operative Housing Society, then the bank and financial institutions and thereafter other statutory dues will be deposited and the residual amount

remaining thereafter shall be paid over to the Petitioner for the benefit of medical treatment undertaken by him for his brother Mr. Dilip Kumar. Regarding this, the Court shall pass appropriate directions on the Court Receiver's Report at the time of disbursement of the sale proceeds. Banks / NBFC and Societies shall remain present and due notice shall be given to them by the Court Receiver about the date of hearing before the Court of the status Report for sale confirmation.

- (ix) This Court has *prima facie* analyzed and placed on record the existing liability and it is *prima facie* clearly seen that all liabilities can be easily satisfied after the sale of the aforesaid two flats which are situated in a prime location in Mumbai. In that view of the matter, both the Co-operative Housing Societies are directed by this Court to give its NOC for sale of the flats to the Court Receiver so that aforesaid exercise can be undertaken. Similarly the bankers i.e. IndusInd Bank and Edelweiss (NBFC) are also directed by this Court to co-operate and give their respective NOCs to the Court Receiver to enable him to take necessary steps

for sale of the aforesaid two flats as per the directions given by this Court so that sale proceeds of the flats can be applied for meeting the liabilities as alluded to herein above;

(x) Court Receiver is directed to immediately act upon an authenticated copy of this order produced by the Petitioner and / or his Advocate before him;

(xi) The aforesaid exercise shall be completed by the Court Receiver within a period of three months from today at the highest and no other extension of time shall be sought in view of the medical condition of Mr. Dilip Kumar. This is in view of the fact that residual amount after the aforesaid liabilities are satisfied is required for the benefit of Mr. Dilip Kumar who is having an extreme medical condition which has been already referred to herein above;

(xii) After the entire aforesaid exercise is completed and the residual amount is handed over to the Petitioner, Petitioner shall open a bank account in the name of Mr. Dilip Kumar and he being the guardian of Mr. Dilip Kumar shall operate the said account at his discretion. Needless to state that the directions given

by the learned Trial Court of placing on record the yearly statement shall remain as it is and at the end of each financial year, as directed by the learned Trial Court, the Petitioner shall place the details of the financial status of the account of Mr. Dilip Kumar's assets and expenditure incurred for the information of the learned Trial Court;

(xiii) Court Receiver shall file a status report for seeking confirmation of the sale of both the aforesaid flats within three months from today positively.

31. Liberty to the parties including the Financial Institutions and Societies to apply to the Court in case of any difficulty or requirement of any further directions after giving due notice to Petitioner and Court Receiver.

32. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

H. H. SAWANT

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