IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COURT RECEIVER REPORT NO.8 OF 2023
IN
WRIT PETITION NO.12544 OF 2017

Rajkumar L. Pahuja .. Petitioner

Versus

Citi Bank N.A. .. Respondent

WITH

INTERIM APPLICATION NO.13618 OF 2023
IN
WRIT PETITION NO.12544 OF 2023

Kotak Mahindra Bank Limited .. Applicant

<u>In the matter between:-</u>

Rajkumar L. Pahuja .. Petitioner

Versus

Citi Bank N.A. .. Respondent

Mr.Sandeep Maurya, Advocate for the Petitioner.

Mr.Rakesh Singh a/w Heena Shaikh i/b M.V.Kini & Co., Advocates for Respondent/Citi Bank.

Ms.Dimple Tejani i/b Sanjay Anabhawane, Advocates for Applicant in IA/13618/2023.

Mr.Shridhar Dhekale, Court Receiver is present in Court.

Mr.Rajkumar Pahuja, Petitioner is present in Court.

Mr.Alif Mobhani, Deputy Manager, Kotak Mahindra Bank Ltd, present in Court.

Mr.Sagar Padwal, Manager, Axis Bank is present in Court.

CORAM :B. P. COLABAWALLA & SOMASEKHAR SUNDARESAN,JJ.

DATE :APRIL 30, 2024

P. C.

1. The above Writ Petition was filed laying a challenge to the order dated 19th September 2017 passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai in proceedings under Section 14 of the SARFAESI Act, 2002. In this Writ Petition on 12th July, 2018 the Court Receiver came to be appointed on the premises in question, namely, Flat No.801 comprising of 550 sq.ft. (carpet area) with attached toilet and bathroom and an adjoining terrace, totally admeasuring 916 sq. ft. i.e. out of which an area of 484 sq.ft. is below the over head tank a and further area of 432 sq.ft. is open to sky i.e. totally admeasuring 1466 sq.ft., situate on the 8th floor of Jasmine Apartment CHSL, D.S. Phalke Road, Dadar (E), Mumbai-400014 (for short "**the said flat**") as per Consent Terms dated 12th July 2018. The order further recorded that the Court Receiver shall auction the said flat after following due procedure of valuation etc and upon sale of the said flat, the Court Receiver shall submit a report to this Court. Thereafter, the Court Receiver was unable to sell the aforesaid flat. That has been duly recorded in the order of this Court dated 5th December 2019. In these circumstances, this Court on the said date disposed of the above Writ Petition by quashing the impugned order dated 19th September, 2017 and restoring status quo ante as it existed when the Writ Petition was filed. The Court further directed that in the event the Court Receiver is unable to sell the flat, Clause 13 of the Consent Terms would come into play which reads as under:-

> *"(13) The parties agree that in case if the Learned Court Receiver is unable to sell "the Terrace Flat" within the period/extended period, as specified in Clause 6, as aforesaid, the Learned Court Receiver shall immediately, re-hand over the possession of the terrace, to the Petitioner, to the extent as taken from him, as aforesaid. The parties further agree and undertake to this Hon'ble Court that the Learned Court Receiver shall continue to be in possession of the flat and the terrace i.e. to the extent as handed over by the Petitioner's brother, as aforesaid, and that the Petitioner shall be handed over the possession of the portion of the flat, by the Learned Counsel Receiver, as per order dated 18-9-2017, passed in Appeal from Order bearing No.504 of 2017, as aforesaid, subject to re-handing*

over the possession of the portion of the flat, as shall be obtained under the said order, to the Learned Court Receiver, as and when the sale of the terrace flat takes place."

Thereafter several orders have been passed by this Court because even Clause 13 was not possible to implement.

2. Today when the matter is called out, we are informed that the two banks in question namely Citibank N.A. (now Axis Bank Ltd) and Kotak Mahindra Bank Ltd (the Intervener), as well as the Petitioner, have agreed to the following terms:-

(a) The Intervener (Kotak Mahindra Bank Ltd) has identified a prospective purchaser M/s.Noor Properties, who after inspection of the said flat have shown their interest to purchase the said flat for a total consideration of Rs.1,55,00,000/- on an "as is where is" basis, "as is what is" and "as is whatever" basis.

(b) The prospective purchaser has agreed to deposit the entire amount of Rs.1,55,00,000/- with the Court Receiver, High Court Bombay on or before 30th June, 2024.

(c) Upon deposit of this amount, the sale of the said flat shall stand confirmed in favour of M/s.Noor Properties and the Court Receiver shall issue a sale certificate and also complete all the sale formalities and handover peaceful and vacant possession of the said flat to M/s.Noor Properties.

(d) Once the monies are received from M/s.Noor Properties, the Court Receiver shall disburse an amount of Rs.51,66,666/- to the Petitioner/Mr.Rajkumar Pahuja. On receipt of the aforesaid amount, the Petitioner shall relinquish all his right, title and interest in the said flat so as to give clear title to the prospective purchaser M/s.Noor Properties. This amount of Rs.51,66,666/- shall be disbursed by the Court Receiver to the Petitioner within one week of receiving the monies from the prospective purchaser.

(e) As far as the balance sale consideration is concerned, it is agreed between Citibank N.A. (now Axis Bank) and Kotak Mahindra Bank Ltd (the Intervener) that an amount of Rs.30,00,000/- will be paid over to Citibank N.A. (now Axis Bank) and Rs.73,33,334/- shall be paid over to Kotak Mahindra Bank Ltd by the Court Receiver.

(f) For the purposes of smooth implementation of the present arrangement it is agreed between all the parties hereto that they will co-operate with the Court Receiver for transfer of the said flat in favour of M/s.Noor Properties. This is of course subject to M/s.Noor Properties depositing Rs.1,55,00,000/- with the Court Receiver for purchasing the said flat. Each of the Banks have agreed that they shall handover the original title deeds of the said flat in their respective possession to the Court Receiver within a period of two weeks from today.

(g) Kotak Mahindra Bank Ltd and Citibank N.A. (now Axis Bank) have further agreed that for their balance outstanding dues under their respective loan accounts from the borrowers, they shall file appropriate proceedings to recover the same. It is also agreed that the said flat which is sold pursuant to this order will be kept out of their respective proceedings initiated for recovery of their respective outstanding dues from the borrowers.

(h) Once the Court Receiver hands over physical possession of the said flat and issues a sale certificate, and all formalities of sale are completed, the Court Receiver shall stand discharged without taking accounts but on the payments of his costs, charges and expenses.

(i) The parties have agreed that all the costs, charges and expenses of the Court Receiver shall be borne by Citibank N.A. (now Axis Bank) and Kotak Mahindra Bank Ltd equally. It is made clear that no costs, charges and expenses shall be recovered from the Petitioner and the entire amount of Rs.51,66,666/- shall be paid to the Petitioner without any deductions.

(j) The Court Receiver, on completing the sale of the said flat, shall immediately intimate his costs, charges and expenses to Citibank N.A. (now Axis Bank) and Kotak Mahindra Bank Ltd respectively.

3. The above Court Receiver's Report is accordingly disposed of. However, there shall be no order as to costs.

4. In view of this order, nothing survives in the Interim Application filed by the Kotak Mahindra Bank Ltd to intervene in the above matter and the same is disposed of accordingly.

5. Though we have disposed of the above Court Receiver's Report, to ensure compliance of this order, we now place the matter on 8th July, 2024.

6. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN,J.] **[B. P. COLABAWALLA, J.]**

Utkarsh