IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1064 OF 2024

Ms.Manisha Milind Shinde .. Petitioner

Versus

The Branch Manager, Union Bank of India & Ors .. Respondents

Mr.Charles D'souza*, with Mr.Vinay Deshpande, Nikhil Rajani, Rupak Sawanglikar, Shreyansh Desai i/b M/s V. Deshpande & Co, Advocates for the Petitione*r.

Mr.Asif Patel, Addl. G.P.*, with Savina R. Crasto AGP, for the State.*

Mr.Alok Kumar D. Mishra, Advocates for Respondent No.2.

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: AUGUST 21, 2024

P. C.

1 Rule. With the consent of the Petitioner and Respondent No.2 (and who is the only contesting Respondent), Rule made returnable forthwith and heard finally.

2 The above Writ Petition is filed seeking a direction under Article 226 of the Constitution of India to Respondent No.1-Union Bank of India

(***UBI***) to release and handover the Original Title Deeds / Documents relating to Flat No.2603, Building No. 6-B, Sapphire Heights Co-operative Housing Society Limited, Lokhandwala Township, Akurli Road, Kandivali (E), Mumbai 400 101 (for short "***the said flat***") to Respondent No.3-State Bank of India (***SBI***). The said flat was given as a security to UBI in respect of a housing loan and a Top-up loan availed by the Petitioner and Respondent No.2.

3 To decide the present controversy, the facts are in a very narrow compass. The Petitioner married Respondent No.2 on 22nd May, 1998 as per Hindu Law. On 28th October 2010, a registered Agreement for Sale was executed between the Developer on one hand and the Petitioner and Respondent No.2 on the other hand (as joint purchasers) for purchase of the said flat. For the purchase of the said flat, Respondent No.1 sanctioned a housing loan of Rs.94,50,000/- to the Petitioner and Respondent No.2 under Loan Account No.560631001880935. The condition for sanctioning this housing loan was creation of a mortgage of the said flat. Thereafter, the Petitioner and Respondent No.2 availed of a Top-up loan from Respondent No.1 of Rs.19,50,000/- bearing Account No.560616000073471, and which was also secured by a mortgage of the said flat.

4 It is the case of the Petitioner that by a registered Gift Deed dated 25th January 2019, Respondent No.2 gifted his 50% undivided share in the said flat in favour of the Petitioner. It is on the basis of this Gift Deed that the Petitioner now claims to be 100% owner of the said flat.

5 It is also the case of the Petitioner that on 17th October 2021, the Petitioner and Respondent No.2 separated due to personal differences and are residing separately. Be that as it may, since a Gift Deed was executed by Respondent No.2 transferring his 50% undivided share in said flat in favour of the Petitioner, on 10th July 2022, the Society in which the said flat is situated, recorded the Petitioner's name in Share Certificate No.521.

6 It appears that the original Gift Deed was misplaced by the Petitioner, and therefore, on 29th September 2022, the Petitioner reported loss of the Gift Deed to the Samta Nagar Police Station and filed a Lost Report No.35750 of 2022. In furtherance of this Lost Report, the Petitioner also, on 1st October 2022, published a notice in two leading newspapers putting the public at large to notice of the loss of the Gift Deed. According to the Petitioner, though such a notice was given, no claims were received in response to the said public notice, including any from Respondent No.2.

7 Since, according to the petitioner, there were defaults in repaying the loan taken from UBI, the Petitioner negotiated a takeover of the UBI loans by SBI (Respondent No.3). Accordingly, on 16th December 2022, UBI issued foreclosure letters informing the Petitioner that the total outstanding dues were Rs.61,02,796/-. In light of this letter, SBI issued a Sanction letter to the Petitioner for Rs.60,95,000/- to take over the UBI Loans. This sanction letter is dated 28th December, 2022. Pursuant to this Sanction letter, SBI on 29th December 2022, also issued two Demand Drafts in UBI's favour for taking over the UBI loans. On 30th December, 2022 the Petitioner forwarded the Demand Drafts to UBI and also paid Rs.61,000 from her own sources to close the UBI loans and requested for transfer of the original documents to SBI as well as issue a "No Dues Certificate".

8 Since the original loans taken from UBI were by the Petitioner and Respondent No.2, UBI insisted on an NOC from Respondent No.2 before transferring/ handing over the Title Deeds/ Documents [in relation to the suit flat] to SBI. Respondent No.2 also objected to the take over of the UBI loan by SBI and requested UBI not to act on the Petitioner's request. It is in this background that the present Petition is filed seeking a direction to Respondent No.1 to handover the Original Title Deeds of the said flat to Respondent No.3.

9 As far as Respondent No.1 (UBI) is concerned, they have made a statement before this Court on 2nd February, 2024 that they would have no problem in handing over the documents to the Petitioner, who, then would handover the same to SBI, except for the objection received from Respondent No.2. In other words, as far as handing over the Title Deeds to SBI is concerned, UBI has no objection.

10 Respondent No.2 has filed two affidavits in this Court opposing the grant of these reliefs. The first affidavit is dated 14th February, 2024 and the second affidavit is dated 7th August, 2024. The opposition of Respondent No.2 in both these affidavits is basically that the Gift Deed that was executed in favour of the Petitioner by Respondent No.2, was executed at a time when Respondent No.2 was suffering from clinical depression and was not of sound mind when he executed the said Gift Deed. In the Second Affidavit filed by Respondent no. 2, he has also disclosed that he has filed a Suit in City Civil Court at Dindoshi on 22nd July, 2024, being Suit(L) No. 6429 of 2024, challenging the said Gift Deed. It is basically on this ground that the reliefs sought in the above Writ Petition are opposed by Respondent No.2.

11 We have heard Mr.D'souza, the learned counsel appearing for the Petitioner, as well as the learned counsel appearing on behalf of Respondent No.2. We have also perused the papers and proceedings in the above Writ Petition. Certain facts that we have noted above, and which we would like to reiterate, are undisputed. Firstly, it is undisputed that the said flat was originally bought in the joint names of the Petitioner and Respondent No.2 respectively. It is also not in dispute that the Petitioner and Respondent No.2 were co-borrowers when they availed of the housing loan and the Top up loan from UBI, and which is now sought to be paid off by the Petitioner by taking a loan from SBI. It is also not in dispute that a Registered Gift Deed has been executed by Respondent No.2 in favour of the Petitioner. This has been specifically admitted by Respondent No.2 in his affidavit dated 9th August, 2024. The only contention raised by Respondent No.2 is that the Gift Deed is challenged in the Suit filed by him before the City Civil Court at Dindoshi and the same is pending. Having seen these facts, and after hearing the learned counsel for the parties, we are of the opinion that the pendency of the said Suit has nothing to do with the reliefs sought in the present Petition. In the present Petition all that is sought is that UBI transfer the Title Deeds [which it is holding] to SBI. This relief is sought because admittedly the loans availed of from UBI have been discharged and these loans have effectively been taken over by SBI. Once these are the

undisputed facts, the directions sought [to UBI to handover the title deeds of the said flat to SBI] deserve to be granted. This is more so when one takes into consideration that now Respondent no. 2 owes nothing to UBI and he is not a signatory to the loan taken from SBI, and which loan was taken to pay off the dues of UBI.

12 In these circumstances, we direct that UBI (Respondent No.1) shall handover all the documents listed in Exhibit-J to the Petition, along with Share Certificate No.521, to SBI within a period of two weeks from today. UBI shall encash the Pay Orders/ Demand Drafts issued by SBI, if not already done and appropriate the sale proceeds towards the housing loan and the Top-up loan availed of by the Petitioner and Respondent No.2 from UBI, and close the said account. UBI shall then also issue a No Dues Certificate to the Petitioner and Respondent No.2.

13 We may hasten to add that the directions that we have given above shall not in any way prejudice the Suit filed by Respondent No.2 against the Petitioner laying a challenge to the Gift Deed, and which shall be decided on its own merits and in accordance with law. Mr.D'souza, the learned counsel appearing on behalf of the Petitioner has stated, on instructions, that the Petitioner even after the discharge of the loan taken

from SBI, during the pendency of the aforesaid Suit, will not create any third party rights in the said Flat without first giving 30 days notice to Respondent No.2. The said statement is accepted as an undertaking given to the Court.

14 Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

15 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

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