

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.26533 OF 2024

ALONG WITH

INTERIM APPLICATION NO.13083 OF 2024

1. Girish Anil Haldankar	]	
2. Anil Pandurang Haldankar	]	
3. Mira Anil Haldankar	]	.. Petitioners-Applicants

Versus

1. Kotak Mahindra Bank Ltd., Mumbai	]	
2. Raj Arcade and Enclaves Pvt. Ltd., Mumbai	]	
3. Rajesh Dhanji Savla	]	
4. Ashwin Madhusudan Mistry	]	
5. Jayesh Vrijlal Rami	]	
6. Mahesh Savla	]	
7. Hiral Mahesh Savla	]	
8. ICICI Bank Ltd., Mumbai	]	.. Respondents

Mr. Sanjeev Gorwardkar, Senior Advocate, with Mr. Paresh C. Mankad,
i/by Mr. Pravin D. Kadam, Advocates for the Petitioners-Applicants.

Mr. Alok D. Mishra, Advocate for Respondent No.1.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 23RD SEPTEMBER 2024

PC. :

1. The challenge raised in this writ petition is to the order passed by the Debts Recovery Tribunal on 22nd August 2024 in Securitization Application No.279 of 2024. It is the case of the petitioners-applicants that they are bonafide purchasers of Flat No.206 at the building “Raj-Shivganga” having entered into a registered Agreement on 8th February

2019. They have obtained finance for purchasing the aforesaid flat from the respondent no.8-ICICI Bank. They seek to rely upon documents executed by respondent nos.6 and 7 admitting absence of any liability on the said premises. They have since then entered into possession of the aforesaid premises. In view of the steps taken by the respondent no.1-Kotak Mahindra Bank under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the petitioners undertook search of the title of the said premises on 24th February 2023. They approached the Debts Recovery Tribunal for challenging the steps taken by respondent no.1 as regards the aforesaid flat. In the proceedings filed before the Debts Recovery Tribunal, the petitioners were not found entitled to any interim protection. By urging that petitioners are bonafide purchasers, they have filed this writ petition for challenging the order passed by the Debts Recovery Tribunal. It is pointed out that pursuant to the notice dated 4th September 2024 issued by the Court Commissioner, possession of the subject property is to be taken today.

2. The learned counsel for the respondent no.1-Kotak Mahindra Bank objects to the maintainability of the writ petition on the ground that an alternate efficacious remedy before the Debts Recovery Appellate Tribunal is available. He seeks to rely upon the decisions in *Phoenix ARC Pvt. Ltd.*

Vs. Vishwa Bharati Vidya Mandir and Ors., (2022) 5 SCC 345 and PHR Invent Educational Society Vs. UCO Bank and Ors., (2024) 6 SCC 579 in that regard. According to him, in view of earlier CERSAI registration in the year 2013, the Debts Recovery Tribunal rightly refused to grant him protection.

3. We find that an alternate efficacious remedy under Section 18 of the Act of 2002 is available to the petitioners for challenging the order dated 22nd August 2024 passed by the Debts Recovery Tribunal in Securitization Application No.279 of 2024. Hence, we are not inclined to entertain the writ petition. However, in the light of the fact that possession of the subject premises where the petitioners are stated to be residing is to be taken today, with a view to grant some breathing time, the said act of taking possession would be required to be deferred for a short period of ten days. Accordingly, the following order is passed :-

- (a) The writ petition is not entertained in view of availability of an alternate remedy. The petitioners are free to avail the alternate remedy. All points on merits raised in the writ petition are kept open.
- (b) The act of taking possession by the Court Commissioner according to the notice dated 4th September 2024 is deferred for a period of ten days. Accordingly, the date of execution of the commission for taking possession is re-scheduled to 3rd October 2024.

4. The learned counsel for the respondent no.1-Kotak Mahindra Bank submits that police aid was to be provided today. If that be so, such police aid shall be provided on 3rd October 2024 as per rules.

5. The writ petition is accordingly disposed of as not entertained. In view thereof, the pending interim application is also disposed of as infructuous.

6. The parties as well as the Court Commissioner to act on authenticated copy of this order.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]