

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1249 OF 2024

Kishor H. Mehta

.. Petitioner

Versus

Union Bank of India & Anr.

.. Respondents

Mr.Rafeeq Permohideen i/b Sneha Sanap, Advocates for
the Petitioner.

Mr.Charles D'souza a/w Roshan Gaud, Advocates for
Respondent No.1.

CORAM: B. P. COLABAWALLA &
M.M. SATHAYE, JJ.

DATE: APRIL 04, 2024

P. C.

1. The above Writ Petition was disposed of by our order dated 29th February, 2024. By the said order we had taken the Consent Terms entered into between the Petitioner and Respondent No.1 on record and marked it as 'X-1' for identification. We had also taken the OTS sanctioned by Union Bank of India on record and marked it as 'X' for identification. Under the Consent Terms certain payments were to be made by the Petitioner to the 1st Respondent Bank by 1st March, 2024. We had placed the matter on 7th March, 2024 for reporting compliance. The payments that were to be made on 1st March, 2024 were in fact

done, *albeit* belatedly with a delay of 7 days, namely, on 7th March, 2024. Since the next payment was to be made on or before 30th March, 2024 [the amount of Rs.60,30,00,000/-] we had placed the matter on 1st April, 2024 for reporting compliance. When the matter had come up on 1st April, 2024 we had placed matter today to see if the Petitioner could make the payment by today.

2. Even today, the Petitioner has not been able to make the payment. Considering these circumstances, the Consent Terms itself contemplate what is to happen in the event there is a default. More particularly, clause 19 of the Consent Terms contemplates that if the amount of Rs.65,30,00,000/- is not paid by 30th March, 2024 then on receipt of the affidavit affirmed by the Authorized Officer of Respondent No.1 confirming default by the Petitioner in adhering to the payment terms, the Advocate Commissioner, Mr.Wilson Vasant Gaikwad, and who is already appointed as Court Commissioner, shall take physical possession of the secured asset mentioned in clause 1 (iii) of the Consent Terms on 4th April, 2024. For the sake of convenience the secured asset described in paragraph 1(iii) of the Consent Terms is reproduced hereunder:-

Residential building (9 storied) situated at Plot No.53, Nutan Laxmi CHS Ltd., North South Road No.9 bearing C.T.S. No.660, S.No.70, Sub Plot No.53 admeasuring 800 sq.yards. In the Nutan Laxmi Co-operative Housing Society Ltd., North South Road No.9, J.V.P.D. Scheme, Vile Parle (West), Mumbai-400 056 standing in the name of Shri Kishore Mehta bounded by;

*Towards North :Plot No.52,
Towards South :Plot No.54,
Towards East :Plot No.67,
Towards West :40 feet wide Road No.9*

3. Mr.D'souza, the learned counsel appearing on behalf of the 1st Respondent Bank has tendered an affidavit on behalf of Respondent No.1 stating that there has been a default in the payment as contemplated under the Consent Terms. The said affidavit dated 4th April, 2024 is taken on record. It is also not in dispute before us that the amount of Rs.60,30,00,000/- has not been paid by the Petitioner to the 1st Respondent Bank and which would amount to a default.

4. In these circumstances, the Advocate Commissioner, Mr.Wilson Vasant Gaikwad, and who is already appointed as a Court Commissioner, shall take physical possession of the secured asset more particularly described in paragraph 1 (iii) of the Consent Terms, on 12th

April, 2024 commencing from 11.00 a.m. In order to ensure that the Court Commissioner is in position to take physical possession of the said secured asset, the local police station shall give all assistance to the Court Commissioner [by deputing adequate number of police personnel], so that he can take physical possession of the secured asset and handover the same to the Authorized Officer of the 1st Respondent Bank, failing which the Senior Police Inspector of the said police station shall be liable for contempt.

5. All other clauses in the Consent Terms, as what is to happen if a default is committed, shall come into operation.

6. We now place this matter on 15th April, 2024 at 4.30 p.m. for reporting compliance regarding taking of physical possession of the secured asset described at paragraph 1(iii) of the Consent Terms dated 29th February, 2024.

7. 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.

[M.M.SATHAYE,J.]

[B. P. COLABAWALLA, J.]