IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2314 OF 2025

1. Kishor Vithalrao Vinchurkar, Aged about 64 years, Occ. Nil.

2. Kanchan Kishor Vinchurkar, aged about 56 years.

Both R/o Plot No.4 & 8, Ward no.8, Kakde Layout, Holi Chowk, Saoner, Tah. Saoner, District Nagpur. **PETITIONERS**

VERSUS

1. The Authorised Officer, Tata Capital Limited, 7th Floor, Riaan House MPL, House no.247/0-3, Ward no.65, Mohan Nagar, Near LIC square, Kingsway, Nagpur -440001.

Registered Office
11th Floor, Tower A Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai-400 013.

2. Kapil Kishor Vinchurkar, aged about 37 years, Occ: Private, R/o Plot no.4 & 8, Mouza Saoner, Ward no.8, BN No.216, Survey no.220, Kakde Layout, behind Santaji Sabhagruh, Holi Chowk, Saoner, Tah. Saoner, District Nagpur. **RESPONDENTS**

Shri S.D. Chande, counsel for the petitioners.
Shri Yash Kullarwar, Advocate with Shri M.Anilkumar, counsel for the respondent no.1.
Shri S.V. Kulkarni, counsel for the respondent no.2.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : DECEMBER 08, 2025
ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioners have challenged the concurrent findings rendered by the trial Court by order dated 15.10.2024 passed on the application at Exhibit 5 in Regular Civil Suit no.88 of 2024 as well as the order dated 12.02.2025 passed by Additional District Judge, Nagpur in Miscellaneous Civil Appeal no.179 of 2024 refusing to grant injunction restraining the respondent no.1-Financial Company to seize the property which is allegedly mortgaged by the petitioners.

3. The petitioners are the original plaintiffs who have filed suit for declaration and permanent injunction against the Financial Company seeking a declaration that the defendants have played fraud in getting the suit property mortgaged against advancement of loan. In the suit, the plaintiffs also filed an application for grant of temporary injunction to restrain the defendant no.1 from taking possession of the suit property or creating any third party interest during pendency of the suit. The application was opposed by the defendant no.1 and it came to be rejected by order dated 15.10.2024. This order was challenged *vide* Miscellaneous Civil Appeal no.179 of 2024 which came to be dismissed by order dated 12.02.2025. The petitioners have challenged these orders by way of instant petition.

4. The learned counsel for the petitioners submitted that the petitioners have never signed the mortgaged-deed or applied for loan or even applied as co-borrowers. It is submitted that their son has availed a loan from the respondent no.1 and has forged signatures of both the petitioners as guarantor and co-borrower. It is submitted that since their son has failed to repay the loan, the Financial Company has initiated the proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. He submitted that the Courts below have erred in refusing temporary injunction even though the petitioners have put up a case of forgery of their signatures and till the adjudication of the suit, the properties belonging to them required to be protected.

5. As against this, the learned counsel for the respondent no.1-Financial Company strongly opposed the petition. He submitted that there is no dispute that the loan was advanced to the petitioners' son who is arrayed as defendant no.2 in the suit and the respondent no.2 in the instant petition. He submitted that the title documents of the suit property are deposited with the respondent no.1 after advancement of the loan and execution of the mortgage-deed. As such, the case put up by the petitioners about forgery of their signatures on the document of mortgage-deed or as co-borrowers is only an attempt to avoid the liability of repayment of loan. He submitted that the Courts below have rightly considered the relevant factors for grant of temporary injunction and even the conduct of the parties and rightly refused the temporary injunction.

6. While considering the controversy involved, it has to be seen that there is no dispute about advancement of loan to the son of petitioners and the fact of deposit of title deeds of the suit property with the respondent no.1-Financial Company. The Courts below have recorded that the loan amount of Rs.36,00,000/- was disbursed to the son of the petitioners. It is pertinent to note, the loan is not repaid by the son of the petitioners and there are only bald allegations about forgery of their signatures. As such, the allegations of forgery of the petitioners' signatures *prima-facie* appear to be an attempt to somehow prolong the litigation and avoid repayment of loan. The Courts below have rightly appreciated the entire conduct of the parties and refused to exercise discretion in favour of the petitioners. The Courts below have recorded that *prima-*

facie an equitable mortgage-deed is executed by the petitioners and their son in favour of the respondent no.1-Financial Company and the original title deeds are also deposited with it. In the wake of these observations, the interim injunction is rightly refused. No perversity is seen with the approach adopted by the Courts below and hence there is no need to interfere with the concurrent findings rendered by both the Courts.

7. Apart from this, it has to be noted that considering the contentions canvassed by the petitioners that possession of their dwelling house was likely to be taken in the process of recovery of loan under the Act of 2002, this Court had passed an order dated 19.11.2025 granting interim protection in favour of the petitioners subject to deposit of total amount of Rupees Twenty Lakhs within time stipulated. It is informed by the counsel for the parties that the petitioners have failed to deposit the amount as directed by order dated 19.11.2025. Thus, it is clear that the petitioners have not even shown their *bona fide*s which makes them disentitled to claim any discretionary relief from the Court.

8. Having regard to the above mentioned factual and legal aspects, no indulgence is warranted with the impugned orders under Article 227 of the Constitution of India. The writ petition is accordingly dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE

Signed by: Apte
Designation: PS To Honourable Judge
Date: 22/12/2025 19:09:42