Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 786 OF 2026
IN
WRIT PETITION NO. 236 OF 2026

Amit S. Wagmare ... Applicant/ Petitioner

Vs.

State of Maharashtra and Anr. ...Respondents

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Mr. Pranav Badheka, Senior Advocate with Mr. Sunny Punamiya & Mr. Tejas Vijaykumar Dhotre, Advocates for the Applicant/ Petitioner.

Mr. K. V. Saste, Additional Public Prosecutor, for the Respondent No.1-State.

Mr. Amit Munde, Special Public Prosecutor with Mr. Jai Vohra, Mr. Balaji Gurav, Mr. Shantanu Nakashe, Advocates for the Respondent No.2-C.B.I.

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CORAM: SHREE CHANDRASHEKHAR, CJ & SUMAN SHYAM, J.

DATE: 22nd APRIL 2026.

PC:-

This interim application has been filed seeking restoration of Writ Petition No. 236 of 2026 which was dismissed for non-prosecution.

2. From the proceedings in Writ Petition No. 236 of 2026, we gather that no one appeared for the petitioner on 27th January 2026 and 28th January 2026. Mr. Pranav Badheka, the learned senior counsel for the petitioner states on instructions that the petitioner was the Secretary of six Housing Co-operative Societies which were merged as Chikanghar Shantidhoot Co-operative Housing Society Limited. The petitioner is seeking a direction for registration of a First Information Report and investigation thereto by the Central Bureau of Investigation. The learned senior counsel for the petitioner submits that the development agreement executed with the Tycoons Avanti Projects LLP has been misutilized by the said developer and the lands comprised under the development agreement were mortgaged with HDFC Bank. The learned senior counsel for the petitioner, therefore, submits that to enquire into the entire transaction by the developer, a direction may be issued to the Central Bureau of Investigation.

3. We are of a *prima facie* opinion that the prayers made in the writ petition are not entertainable.

4. The materials on record indicate that the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are pending before the Tribunal and the petitioner seems to have approached the HDFC Bank also.

5. In *" Mardia Chemicals Ltd. And Ors. v. Union of India and Ors.*[1] the Hon'ble Supreme Court observed that the aggrieved party

1 (2004) 4 Supreme Court Cases 311

may have recourse to Civil Court. Paragraph No.51 of the said judgment reads thus:-

> *“**51.** However, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. We find such a scope having been recognized in the two decisions of the Madras High Court which have been relied upon heavily by the learned Attorney General as well appearing for the Union of India, namely V. Narasimhachariar AIR at pp. 141 and 144, a judgment of the learned single Judge where it is observed as follows in para 22: (AIR p. 143).*
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> > *"22. The remedies of a mortgagor against the mortgagee who is acting in violation of the rights, duties and obligations are twofold in character. The mortgagor can come to the Court before sale with an injunction for staying the sale if there are materials to show that the power of sale is being exercised in a fraudulent or improper manner contrary to the terms of the mortgage. But the pleadings in an action for restraining a sale by mortgagee must clearly disclose a fraud or irregularity on the basis of which relief is sought: 'Adams v. Scott, (1859) 7 WR (Eng.) 213(249). I need not point out that this restraint on the exercise of the power of sale will be exercised by Courts only under the limited circumstances mentioned above because otherwise to grant such an injunction would be to cancel one of the clauses of the deed to which both the parties had agreed and annul one of the chief securities on which persons advancing moneys on mortgages rely. (See Ghose Rashbehary : Law of Mortgages, Vol.II, 4th Edn., p. 784).”*

6. While such is the state of affairs, this Court is not inclined to entertain this Interim Application No.786 of 2026 which is dismissed. The petitioner shall have a liberty to avail the remedy as available to him in law.

(SUMAN SHYAM, J) **(CHIEF JUSTICE)**