

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present : Mr. Justice Ashok Menon, Chairperson**

**I.A. No. 678/2023 (Stay)**

**In**

**Misc. Appeal No. 122/2023**

**Between**

Ajay Govind Vaidya

V/s.

Union Bank of India & Ors.

Senior Counsel Mr. Umesh Shetty, i/b Mr. V.K. Nair, Advocate for Appellant.

Mr. Anchit Ojha, i/b Mr. R.K. Dubey & B.N. Joshi, Advocate for Respondent No.1

... Appellant/s

... Respondent/s

**:- Order dated: 09/10/2023:-**

The matter is taken up for hearing by way of a praecipe filed by the Appellant for seeking urgent relief.

This is an appeal filed by the Appellant impugning order dated 12.09.2023 in Interim Application at Diary (I.A.) No. 1948/2023 in Securitization Application (S.A.) No. 338/2023 on the files of the Debts Recovery Tribunal-II, Mumbai (D.R.T.) wherein the Ld. Presiding Officer refused to grant any protection order to the Appellant and the Appellant who claimed to be a one-third shareholder of the property which is subjected to Sarfaesi measures is facing the threat of the property being sold in a public auction by the 1<sup>st</sup> Respondent Bank which I am told is scheduled to be held on the 13<sup>th</sup> of instant.

2. The Appellant claimed to be the legal heir of his father late Govind Vaidya who was allotted property under the scheme name for Schedule Cast and Schedule Tribe. There is a specific government order which prohibits the sale of property without obtaining the sanction of the government. The subject property which is Plot No. E-21/A at Chembur was allegedly sold by the aforesaid late Mr. Govind Vaidya in favour of the 2<sup>nd</sup> Respondent who is also the elder brother of the Appellant by means of a sale deed executed on 08.06.2000. The sale deed is neither stamped properly nor registered. It seems that the 2<sup>nd</sup> Respondent had earlier obtained a loan from the Bank of Maharashtra to create the mortgage of the said property.

3. Thereafter, the property was again sought to be mortgaged by the 2<sup>nd</sup> Respondent in favour of the 1<sup>st</sup> Respondent Bank and after obtaining two facilities of the loans of more than of ₹5 Crore. The loan due to the Bank of Maharashtra was closed and replaced with only the present loan due to the 2<sup>nd</sup> Respondent. The simple mortgaged deed was executed and registered in favour of the 1<sup>st</sup> Respondent on 19.09.2019 and the Appellant's father Mr. Govind Vaidya expired in 2016 leaving behind three sons of the legal representatives it appears that the Appellant had filed Civil Suit for partition against his brother for dividing the subject property as Civil Suit No. 298/2018 before the City Civil Court, Mumbai. He also obtained an interim injunction which was later extended on 13.12.2018 preventing the 2<sup>nd</sup> Respondent from creating any third-party interest in the property. It is surprising that after obtaining the prohibitory order from the Civil Court that the present mortgage in favour of the 1<sup>st</sup> Respondent was

created on 19.09.2019. The 1<sup>st</sup> Respondent came to know about the prohibitory order and also sought to get impleaded by way of the intervention application in the Civil Suit and Chamber summons was moved which faced dismissal. The 1<sup>st</sup> Respondent thereafter moved an application u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act” for short) for physical possession of the property. The Chief Metropolitan Magistrate passed an order on 24.02.2023 u/s 14 directing the Court commissioner appointed by the court to take physical possession of the property and I am told that the physical possession of the property has already been taken on 13.09.2023.

4. The Ld. Counsel appearing for the Appellant also pointed out certain infirmities in the order u/s 14 which stands challenged in the S.A. The order passed by the CMM was on the basis of the affidavit filed by the Chief Branch Manager of the bank who was not properly authorized by the bank as an Authorized Officer. Subsequently, when the bank realized that the authorization was not proper, a resolution was taken, appointing an Authorized Officer, who filed another affidavit on 23.06.2023 with a nine-point affidavit which was accepted by the CMM but that was subsequent to the order passed u/s 14. The Ld. Counsel appearing for the Appellant would therefore, submits that the order u/s 14 is invalid and requires to be set aside. The Ld. Presiding Officer has not gone into the validity of the assignment deed on the basis of which the 2<sup>nd</sup> Respondent had mortgaged in the property nor has he discussed anything about the challenges raised to the order u/s 14 in view of the lack of authority

that the Authorized Officer had in filing the application, and refused to grant the prohibitory order solely based on the assignment deed in favour of the 2<sup>nd</sup> Respondent and also notice in that the 2<sup>nd</sup> Respondent subsequently asserting right over the property by selling it to a person name Mr. Moreshwar Deokumar Guldekar and his wife Mrs. Vijaylaxmi Moreshwar Guldekar by way of an agreement for sale on 16.12.2017.

5. The Ld. Counsel also pointed out the infirmity of the share certificate which entered the name of the 2<sup>nd</sup> Respondent in the 1<sup>st</sup> instants and thereafter the name of Moreshwar has also been entered as the owner of the property but in the subsequent sale which Mr. Moreshwar Guldekar and the Mrs. Vijayalaxmi Moreshwar Guldekar had effective in favour of the 2<sup>nd</sup> Respondent in the year 2017 has not been mentioned in the share certificate. The Secretary to the Society has issued a letter to the 2<sup>nd</sup> Respondent stating that the share certificate endorsement made therein is not valid and is forged and fictitious.

6. The rival arguments were considered and records perused. With overwhelming evidence to indicate that the Appellant has a very strong prima facie case, it was only in the best interest of the justice that the proposed Safaesi action against the subject property be stalled till the final decision is taken in the S.A. The sale of the property would only create further complications by dragging an auction purchaser who may also have to purchase litigation.

7. Under the circumstances, I am of the opinion that the impugned order needs to be stayed and the intended sale of the subject property on the 13<sup>th</sup> instant shall be deferred till the further

orders. The Respondent is at liberty to file a reply to the Misc. Appeal.

I.A. No. 678/2023 is allowed.

Post on 26.12.2023 for hearing

Sd/-  
Chairperson

psa-04

DRAFT MUMBAI