

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 661 OF 2015

SBICAP TRUSTEE COMPANY LIMITED., ... Petitioner
Versus
STATE OF GOA, THROUGH ITS CHIEF
SECRETARY AND 2 ORS., ... Respondents

Mr. P. Somdani, Senior Advocate with Mr. Nigel Da Costa Frias,
Mr. Vikas, Advocate for the petitioner.
Mr. Rohan Cama, Mr. Pankay Pai Vernekar and Mr. Nikhil D. Pai,
Advocates for the respondent no.3.
Mr. P. Faldessai, Addl. Govt. Advocate for the respondent nos.1 and
3.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 26th August, 2015

P.C.

At the request of the learned Senior Counsel appearing for the petitioner, leave to substitute the impugned order.

2. The above petition takes exception to an order passed by the learned District Magistrate, the respondent no.3 herein dated 1.6.2015 whereby an application filed by the respondent no. 2 to lead oral evidence came to be allowed.

3. The learned Senior Counsel appearing for the petitioner has taken strong exception to the delay in the proceeding under Section 14 of the SARFAESI Act, as according to him, on account of untenable application filed by the respondent no.2, the proceedings are not yet concluded. The learned Senior Counsel brought to our

notice that when the matter was being heard finally, the respondent no.2 chose to file an application to lead oral evidence with regard to their claim over the subject property which came to be allowed by the impugned order dated 1.06.2015. The learned Senior Counsel has also pointed out that such exercise would further delay the matter and, as such, grave prejudice has occasioned to the petitioner and consequently, the impugned order deserves to be quashed and set aside.

4. On the other hand, the learned Counsel appearing for the respondent no. 2 points out that the necessity in filing such application was on account of the objection raised by the petitioner to read in evidence the documents which were relied upon by the respondent no. 2. The learned counsel further points out that after the impugned order was passed, in fact, the petitioner acted upon such order and the recording of the evidence of the witness of the respondent no. 2 has already commenced. The learned counsel further points out that such evidence went on for two occasions, and, as such, the petitioner is not justified now to challenge the earlier impugned order passed by the respondent no. 3. The learned counsel further points out that in order to establish their claim over the subject property such oral evidence is very much material to justify their stand.

5. We have considered the submissions of the learned counsel and we have also gone through the records. It is not disputed that after the impugned order was passed on 1.6.2015, parties acted upon such

order, and in fact, evidence on behalf of the respondent no. 2 has already commenced and is in progress before the respondent no. 3.

6. In such circumstances, it would not be appropriate for this Court to interfere in this Writ Petition under Articles 226 and 227 of Constitution of India at this stage in impugned order, but, however, taking note of the contentions of the learned Senior Counsel appearing for the petitioner, we find it appropriate to direct the respondent no. 3 to dispose of the proceedings under Section 14 of the SARFAESI Act as expeditiously as possible and in any event within three months from the date of receipt of this order. All the contentions of both the parties on merits are kept open.

7. Petition stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.