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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2042 OF 2015

K.M. Phadtare	...Petitioner
Vs.	
The State of Maharashtra and Anr.	...Respondents

Mr.Amit Sale for Petitioner
Mr. O.A. Das for Respondent No.3
Mr. P.g. Sawant -AGP for Respondent No.4

CORAM : V. M. KANADE &
A.R. JOSHI, JJ

DATE : MARCH 18, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondent Bank.
2. The Petitioner is challenging the order passed by the District Magistrate dated 17.4.2013 permitting the Bank to take possession of the mortgaged property. It is submitted that the property in question is an agricultural land and therefore, as per the provisions of section 31 of the SARFAESI Act, the possession of such property cannot be taken. The Petitioner is also challenging the notices issued under section 13(2) and 13 (4) dated 17.4.2013 and 13.8.2013 respectively, initiating action for taking possession of the suit property which is an agricultural land.

3. The learned counsel for the Respondent Bank has raised a preliminary objection regarding the maintainability of this petition. He has submitted that the Petitioner has an alternate efficacious remedy available of filing an appeal under section 17 of the SARFAESI Act. The Apex Court in several cases has held that the borrower has to approach the DRT by filing an appeal under section 17 and a writ petition, challenging the order of the Chief Metropolitan Magistrate/District Magistrate and an action taken by the Bank for recovery of the possession cannot be challenged by filing a writ petition under Article 226 of the Constitution of India.

4. In our view, there is much substance in the submissions made by the learned counsel appearing on behalf of the Respondent Bank. The Apex Court in the case of **United Bank of India vs. Satyavati Tondon and Ors. [AIR 2010 SC 3413]** has in terms observed that the High Court in such cases cannot be entertained the writ petition filed under Article 226 of the Constitution of India. The writ petition, therefore, is dismissed, reserving the right of the Petitioner to file an appeal / application under section 17 of the SARFAESI Act. We are informed that the auction proceeding is going to take place on 26th March, 2015. The auction may take place, however, the sale may not be finalized in order to enable the Petitioner to approach the DRT. All contentions raised by both the parties are kept open. With these directions, the writ petition is disposed of.

[A.R.JOSHI, J.]

[V. M. KANADE, J.]