

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3657 OF 2015

Gagan Om Prakash Navani
and another.

..Petitioners

Versus

The State of Maharashtra
and others.

..Respondents

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Mr. Mayur Khandeparkar, Advocate a/w. Mr. Jehangir Jeejeebhoy,
Mr. Dinesh Peonekar, Mr. Malcolm Siganporia i/b. Hariani & Co. for
the Petitioners.

Mr. V.B. Thadani, Advocate for Respondent No.1.

Mr. Venkatesh Dhond, Senior Counsel a/w. Mr. Shenoy Prasad i/b.
Crawford Bayley & Co. for Respondent Nos.6 and 7.

Mr. Sanjay Jain a/w. Ranjeet Vaghani i/b. Jurisperitus, for
Respondent No.4.

Mr. V.C. Khatri, Advocate for Respondent No.8.

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

DATE : APRIL 10, 2015

P.C.

1. Heard the learned Counsel appearing on behalf of the

petitioners, the learned Counsel appearing on behalf of respondent Nos.6 and 7 and the learned Counsel appearing on behalf of respondent No.4 – SICOM

2. By this Petition filed under Article 226 of the Constitution of India, the petitioners are seeking appropriate writ, order or direction to quash and set aside the order dated 11th August, 2014 passed by the Additional Chief Metropolitan Magistrate and also the letter issued by the respondent No.3 dated 18th March, 2015.

3. According to the petitioners by an oral agreement it was agreed between the petitioners and the respondent Nos.6 & 7 to purchase the suit property for a total consideration of Rs.32 Crores. According to the petitioners, the possession was handed over to the petitioners though on record there is no material to show that any payment has been made by the petitioners to the respondent Nos.6 and 7. It is an admitted position that the respondent Nos.6 & 7 are the borrowers and a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “the

SARFAESI Act”) was issued by the respondent No.4 claiming an amount of Rs.54 Crores. Thereafter symbolic possession was taken in January, 2014 and this fact was duly published in the newspaper. The respondent No.4 thereafter filed an application under Section 14 of the SARFAESI Act before the Metropolitan Magistrate's Court and sought assistance of the Magistrate to take physical possession of the property. Accordingly the impugned order dated 11th August, 2014 was passed and thereafter notice has now been issued by the Registrar informing the respondent Nos.6 and 7 that the possession of the property will be taken today at 12:30 p.m..

4. The learned Counsel appearing on behalf of the petitioners submits that the respondent No.4 Bank has suppressed certain material facts from the Metropolitan Magistrate. He has invited our attention to the application which was filed under Section 14 of the SARFAESI Act and more particularly Clause-8 of the affidavit in support of the said application. It is submitted that it is incorrectly stated that no case has been filed in any Court in respect of the mortgaged property and that there is no stay and the

properties are in possession of the owner. It is submitted that the petitioners filed a suit under Section 6 of the Specific Relief Act and an interim injunction was granted in the said suit which was partly confirmed by the Division Bench of this Court. It is submitted that despite being aware of this fact when the application was filed by the respondent No.4, a false statement was made by them before the Magistrate. It is, therefore, submitted that the petitioners are willing to give a proposal to the Bank for purchasing the entire property and a direction be given to the Registrar not to take possession.

5. On the other hand, Shri Dhond the learned Senior Counsel appearing on behalf of respondent Nos.6 & 7 submits that the respondent Nos.6 & 7 are willing to give proposal for one time settlement and pay Rs.45 Crores to the Bank and that, therefore, the possession of the property may not be taken, though a Court Receiver shall be appointed who may be permitted to take possession and the matter may be kept on Monday.

6. It is not possible for us to accept the said submission

made by the learned Counsel appearing on behalf of respondent Nos.6 and 7. The proposal for one time settlement is made at the stage when the possession of the property is being taken today. The notice under Section 13(2) of the SARFAESI Act was issued almost one and half years ago. The order under Section 14 of the SARFAESI Act has been passed in August, 2014. The orders which are passed by this Court in Section 6 proceedings which are initiated by the petitioners against the respondent Nos. 6 & 7 are in respect of mortgaged property which was mortgaged prior to the alleged oral agreement to sale between the petitioners and the respondent Nos.6 & 7. It is well settled position in law that all agreements which are entered after the property is mortgaged in favour of the bank are not binding on the bank in view of Section 35 of the SARFAESI Act. In our view, all attempts are made by the parties to ensure that the possession is not taken and that too after not paying the amounts which are due and payable to the bank. It is quite well settled that the aggrieved party can always approach the DRT under the SARFAESI Act challenging the order of taking

possession and if the DRT is satisfied, it has ample powers to restore back the possession in favour of the borrower or any other party claiming possession through the borrower. Hence, there is no substance in the submissions made by the learned Counsel on behalf of the petitioners. The Petition is, therefore, dismissed.

(A. R. JOSHI, J.)

(V.M. KANADE,J.)

Deshmane, (P.S.)