

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10285 OF 2012

Thete Papers Private Limited

..Petitioner

Versus

The Kolhapur District Central Co-operative
Bank Limited and others.

..Respondents

....

Mr. Mayur Khandeparkar a/w. Ms.Sapna Rachure, i/b. T.N. Tripathi
& Co. for the Petitioner.

Mr. S.S. Bhise, AGP, for Respondent No.4.

Mr. Vaibhav Mehta a/w. Mr. Dhanesh Shah and Ms. Deepti Mistry,
for Respondent No.3 – UOI.

Mr. P.S. Dani, Senior Counsel a/w. Mr. Chetan Patil, for Respondent
No.5.

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

DATE : MARCH 25, 2015

P.C.

1. Heard learned Counsel appearing on behalf of the
petitioner and learned Counsel appearing on behalf of the
respondents.

2. Initially the Petition was filed by Daulat Shetkari Sahakari
Sakhar Karkhana and the petitioner No.2. Later on an application

was filed on behalf of said Daulat Shetkari Sahakari Sakhar Karkhana stating that the petitioner No.2, without their knowledge and using the power of attorney which was given for some other purposes, had filed the Petition in their name. In view of the application filed by the original petitioner No.1, the original petitioner No.1 was transposed as respondent No.5 in the Petition.

3. It is, thus, obvious that the petitioner – Thete Papers Private Limited has approached this Court with unclean hands. The Petition which was filed seeks to challenge the notification dated 28th January, 2003 which was issued by the Central Government as illegal, arbitrary and *ultra vires* to the Constitution of India and for quashing and setting aside the same.

4. In our view the petitioner is not the borrower as defined by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act). The petitioner in any case, therefore, will have no locus to challenge the said notification. Hence we are unable to consider grant of prayer clause (a). So far as prayer clause (b) is concerned,

the petitioner is challenging the notice dated 6th October, 2012 which was issued by the respondent Bank to the respondent No.5 - Daulat Shetkari Sahakari Sakhar Karkhana. Said notice has been issued under Section 13(4) of the SARFAESI Act. Since the notice has been issued by the Bank to the respondent No.5 and not to the petitioner herein, the petitioner has no right to challenge the said notice. Hence prayer clause (b) also cannot be granted.

5. The learned Counsel appearing on behalf of the petitioner has claimed that they are in possession of the property and that the respondent No.5 is trying to dispossess them with the help of the Bank. We are of the view that the petitioner can exhaust other alternate remedies, if any, which may be available to them. We, therefore, are not inclined to entertain this Petition firstly since the petitioner has approached this Court on misrepresentation that the original petitioner No.1 Daulat Shetkari Sahakari Sakhar Karkhana has authorized them to file the Petition when in fact said original petitioner No.1 filed an application and satisfied this Court that no such power was given to the petitioner - Thete Papers Private

Limited to file present Petition. The Petition, therefore, is dismissed. Interim protection, however, is extended for a period of two weeks.

(A. R. JOSHI, J.)

(V.M. KANADE,J.)

Deshmane, (P.S.)