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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No.1098 OF 2015

Sachin Madhukar Khanolkar & Anr.Petitioners

Vs.

NKGSB Co-operative Bank Limited
and Ors.Respondents

Mr.Sarosh Bharucha a/w. Ms. Sapana Rachure i/b. T.N. Tripathi & CO.
for Petitioners

Mr.Sanjay Anabhawane for Respondents

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

DATE : APRIL 30, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioners and the learned counsel appearing on behalf of the Respondents.

2. The Petitioners are the borrowers and they are invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India and also seeking writ, order and direction, directing Respondent Nos.1 and 2 not to take physical possession of the premises, which were mortgaged in favour of the Respondent Bank.

3. The brief facts are that the Petitioners had availed credit

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facilities of Rs.1,40,00,000/-. The said loan was not paid and, therefore, the loan accounts were classified as NPA. Thereafter, a demand notice under section 13(2) of SARFAESI Act was issued on 7.10.2013. Despite the receipt of the said demand notice, the Petitioners failed to pay the said loan amount and, therefore, symbolic possession of the premises was taken on 20.6.2014. The Petitioners, thereafter, obtained an order from the Chief Metropolitan Magistrate under section 14 of the SARFAESI Act on 11.2.2015. Thereafter, the Assistant Registrar has now fixed the date for taking physical possession of the said premises.

4. It is further submitted that the Petitioners are willing to pay the said amount and some reasonable time may be given to the Petitioners for that purpose.

5. On the other hand, the learned counsel for the Respondent Bank has submitted that the proposal which was given by the Petitioners was not accepted. He submitted that as of today Rs.2,85,00,000/- is due and payable by the Petitioners to the Bank.

6. It is well settled position in law that the Petitioners have an alternate remedy of filing an appeal before the DRT. Even after the demand notice under section 13 (2) of SARFAESI Act was sent, the Petitioners had ample opportunities to approach the DRT. However, they have moved this Hon'ble Court by filing a writ petition under Article 226 of the Constitution of India. Even if the physical possession was taken by the Bank, the Petitioners can file an appeal before the DRT and if the order is passed in their favour, the possession can be restored. Therefore, we are not inclined to entertain this petition while

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exercising our writ jurisdiction under Article 226 of the Constitution of India in view of the fact that the Petitioners have an alternate efficacious remedy of filing an appeal before the DRT. Hence, writ petitions is dismissed.

[A.R. JOSHI, J.]

[V. M. KANADE, J.]