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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1155 OF 2015

Shree Pawansut Infotech Pvt. Ltd. & ors. ... Petitioners
Vs.
Mr. Vivek Wahi and anr. ... Respondents

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Mr. Sitesh Sharm for the Petitioners.
Mr. O.A. Das for Respondent No.1.

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CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : APRIL 23 2015.

P. C.

1] Not on board. Upon production, taken on board.

2] Heard learned counsel appearing on behalf of the petitioners and respondent No.1.

2] The petitioners, by this petition filed under Article 226 of the Constitution of India, are challenging the notices issued by the bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) on 12th January 2015 and 27th March 2015.

3] It is submitted that before the period of sixty days is expired, the respondent bank had proceeded to take symbolic possession of the property. It is submitted that the measures which are supposed to be taken by the bank under Section 13(2) of the SARFAESI Act have not been taken and therefore, the petitioners are entitled to obtain an order of quashing of the said notice dated 12th January 2015 and notice dated 27th March 2015.

4] The petitioners have moved this petition, by way of an urgent production on 20th April 2015 and we have passed the following order on the said date:

> *1. Not on Board. Upon mentioning, the matter is taken on the board.*
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> *2. We are informed by the learned counsel for the Respondent Bank that the Respondent bank have already taken a symbolic possession and they do not propose to take physical possession of the said secured assets. It is also submitted that for the purpose of taking the physical possession, an order will have to be obtained by the Bank under section 14 of the SARFAESI Act. It is submitted that seven days' notice will be given to the Petitioners before taking the possession.*
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> *3. In our view, in view of the statement made by the learned counsel for the Respondent Bank, the matter can be kept for admission after the vacation. Stand over to 10th June, 2015. Statement made by the learned counsel for the Respondent Bank is accepted. Liberty is granted to the Petitioners to move before the vacation court, in the event, the Petitioners received a notice from the bank.*

5] Thereafter, the petitioners had again, now sought production of this petition on the ground that the bank is now proceeding to issue advertisement in the newspapers after the symbolic possession has been taken. It is submitted that since the period of sixty days is not over and the answer given by the bank on 20th April 2015, is contrary to the guidelines laid down by the RBI and contrary to the provisions of 13(2) and 13(4) of the SARFAESI Act.

6] It is submitted that on 22nd April 2015, the respondent No.1 issued a rejoinder to their reply dated 17th March 2015 issued in response to the representation filed by the petitioners vide its letter dated 10th March 2015, stating therein that "*in last line of para 10, the date of our demand notice is erroneously mentioned as 10.03.2015. Please read the same as 12.01.2015, the actual date of demand notice served and received by you vide our reference no.PLCB/SNR/2014-15/621 dt.12.01.2015 also mentioned in bold letters in caption on page 1 of our reply dated 17.03.2015*".

7] On the other hand, learned counsel for the respondent No.1, submitted that it is not in dispute that the notice under Section 13(2) of the SARFAESI Act was issued on 12th January, 2015 and the period of sixty days expired on 12th March 2015. It is submitted that therefore, the symbolic possession was taken on 20th April 2015, after expiration of sixty days. It is submitted that the letter dated 17th

March 2015 is in reply to the representation made by the petitioners in reply to the notice under Section 13(2) of the SARFAESI Act and in that reply in para 10, it was stated that "…..*if you and the guarantors do not repay the Bank's outstanding dues as claimed in the demand notice within a period of sixty days from the date of notice dated 10.03.2015*". It is submitted that this date, i.e., "***10.03.2015***" is wrongly mentioned since that was the date the petitioners have given reply to the notice under Section 13 (2) of the SARFAESI Act, which was issued on 12th January 2015. It is obvious that the period of sixty days was over on 12th March 2015 and it is obvious that a typographical error has occurred in paragraph 10. The petitioners are now trying to take advantage of the typographical error and they are now contend that the period of sixty days is not over. There is no merit in the said submission. In our view, that the bank has correctly acted and had taken the symbolic possession on 20th April 2015.

8] We are of the view that the petition filed by the petitioners, even otherwise, is not maintainable. The petitioners can always file an appeal under Section 17 of SARFAESI Act and challenge the action of the bank. Accordingly, there is no merit in the submission made by the learned counsel for the petitioners. Hence, petition is dismissed.

[M. S. SONAK, J.] [V. M. KANADE, J.]

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