

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1582 OF 2015

(The Samata Sahakari Bank vs. The learned District Magistrate, Nagpur Collector Office, Nagpur
& Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
MARCH 25, 2015.**

Heard Shri Deshpande, learned counsel for the petitioner and Mrs. Maldhure, learned AGP for respondent No. 1.

The petitioner claims to be a Secured Creditor with whom the property of Respondent No. 4 was mortgaged. In relation to very same property, earlier an order under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as SARFAESI Act) was passed by Respondent No. 1 and that order was assailed before this Court in Writ Petition No. 4420 of 2012. On 31.07.2014 this Court set aside that order and has restored the application under Section 14 for its fresh adjudication. Before the Collector, when the matter was taken up, Respondent No. 2 (other Cooperative Bank) has filed a pursis stating that it was not pressing the application and sought leave to withdraw it without going into the merits

of the controversy. In the light of that pursis, Respondent No. 1 has disposed of the proceedings by order dated 01.01.2015.

The grievance of Shri Deshpande, learned counsel is, as the petitioner is a secured creditor and the property is mortgaged with it, Respondent No. 1, who handed over the possession of property of Respondent No. 3 by procuring it from debtor should have then recalled the possession and taken property in its own possession. He submits that because Respondent No. 3 privately and clandestinely sold away the property only to defeat the rights of the petitioner, it filed pursis stating that the applicant does not press the application. During the arguments, copy of pursis is produced by Shri Deshpande, which is taken on record and marked as X for identification.

The dispute is obviously between two creditors. The scope of proceedings under Section 14 of SARFAESI Act is limited. The application under Section 14 moved by Respondent No. 2 was being opposed by the petitioner. Had it succeeded, the application would have been at the most dismissed. However, the property could not have been delivered in their possession in those proceedings.

In this situation, it is obvious that when Respondent No. 2 preferred not to press the application under Section 14 of SARFAESI Act filed by it, Respondent No. 1 – Authorized Officer was left with no other alternative but to dispose of the matter. Respondent No. 1 has stepped into picture only after Section 13(4) notice issued by Respondent

No. 2, otherwise the property was never in its possession. It cannot be said that Respondent No. 1 procured possession and thereafter was competent to adjudicate the dispute between the petitioner and Respondent No. 2. After adjudication of that dispute, he was not supposed to deliver possession to the successful party.

In this situation, with liberty to the petitioner to take appropriate proceedings as are open in law, we dispose of the present petition. However, there shall be no order as to costs.

JUDGE

JUDGE

*GS.