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

WRIT PETITION No. 1239/2014.
Smt. Nanda Deshpal Gaware
VERSUS
Authorized Officer, U.C.O. Bank and another.

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

CORAM : B.P. DHARMADHIKARI AND A.P. BHANGALE, JJ.

DATE : FEBRUARY 26, 2015.

Heard Shri A.S. Murty, learned Counsel for the petitioner and Shri S.B. Walekar, learned Counsel for respondent no.1. None appears for respondent no.2 though served.

This petition has been filed directly before this Court challenging judgment delivered on 19.02.2014 by the Presiding Officer, Debt Recovery

Tribunal, Nagpur. Present petitioner has approached that Authority under Section 17[1] of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act" for short), assailing an action taken by the respondent no.1 Bank, allegedly under Section 13[4] thereof.

Shri Murty, learned Counsel has submitted that - (1) there is no mortgage in favour of respondent no.1 and hence, recourse to Section 13[2] or 13[4] itself is improper. (2) The agreement for sale, though registered, it does not create any right in the property and on that basis such notice or action could not have been taken. (3) Notice of proposed action under Section 13[4] of the SARFAESI Act, was not issued in prescribed manner and hence, petitioner though in physical possession, could not get previous knowledge of the intended action. After office of the Collector was approached under Section 14, the petitioner got knowledge and then he approached the Debt Recovery Tribunal. (4) As physical possession is the only relevant factor in present circumstances, joinder of

Builder namely 'Ashta Vinayak Builders' was not essential and it was also not a proper party. (5) The right of petitioner to occupy the property flows from a registered sale deed in his favour, which is dated 23.04.2007. There was earlier an oral agreement for sale and certain amounts were paid in cash in the year 2005 itself. Certain amounts were paid by cheque also. He submits that thus, the later sale deed dated 15.05.2007 in favour of respondent no.2 is not decisive in present circumstances. (6) He further points out that contention that there was an earlier written and registered agreement for sale by the said developer in favour of respondent no.2, has got no legal implication.

Shri Walekar, learned Counsel appearing on behalf of the respondent no.1 Bank submits that property worth Rs. 8 lacs, has been shown to have been sold for half of its value. He also invites attention to a finding recorded by the Debt Recovery Tribunal in the impugned order to show that there was collusion between the said developer and present petitioner. He submits that in this situation, only to ascertain exact nature of alleged transaction between the petitioner and developer, the developer needed to be joined as party.

Lastly, he submits that as petitioner has already approached the competent Authority under Section 17, a statutory remedy of filing further Appeal under Section 18 before the Debt Recovery Appellate Tribunal is available and without exhausting that remedy, Writ petition as filed should not be entertained.

In reply arguments, Shri Murty, learned Counsel has relied upon a judgment of Single Bench of Chattisgarh High Court in Writ Petition No. 227/1998 and other connected matters, decided on 16.07.2009. He states that in such circumstances, alternate remedy cannot be used to deny the legal protection to petitioner and he cannot be made to run from pillar to post. He also points out that as directed by this Court and only to show bonafides, petitioner has deposited an amount of Rs. 2.50 lacs.

He invites attention to stand of respondent no.1 Bank in reply before the Debt Recovery Tribunal to urge that they are alleging fraud and mis representation. The disputed questions therefore, ought to have been raised by them and they should have obtained appropriate declaration under Civil law from competent forum. He submits that such a finding in present circumstances, cannot be recorded by the Debt Recovery Tribunal.

After hearing the respective counsel, we find that the action of seeking police aid under section 14, resorted to by the respondent no.1 Bank claiming itself to be a secured creditor has given rise to this litigation. Petitioner after getting knowledge thereof, has chosen to knock the doors of Debt Recovery Tribunal under Section 17. It is therefore, obvious that she should have no objection to follow the said channel further by filing an appeal under Section 18. The contentions being raised by him can be looked into even by the D.R.A.T. Same contentions were raised before the Debt Recovery Tribunal, and as such, effort of Shri Murty, learned Counsel to urge that these contentions needs to be evaluated by this Court or findings thereupon can be recorded by the Civil Court only, and till then his possession can be disturbed, therefore, do not show that DRAT cannot look into those contentions.

The Chattisgarh High Court has considered the provisions of Consumer Protection Act and the provisions for Revision or Appeal made therein. In so far as the SARFAESI Act is concerned, the Hon'ble Apex Court on more than one occasion has cautioned the High Court from interfering in such matters in its extra ordinary jurisdiction.

Here we find that this Court has protected possession of the petitioner on 21.03.2014. Petitioner has also shown her bonafides by depositing Rs. 2.50 lacs. In this situation, interest of justice can be met with by permitting the respondent no.1 Bank, secured creditor, to withdraw that amount with interest accrued thereon. Such withdrawal shall be without prejudice and rights of the petitioner. Petitioner is given time of six weeks to file proper appeal under Section 18 of the SARFAESI Act, before the Debt Recovery Appellate Tribunal. Till the said Appellate Tribunal considers the prayer of petitioner for grant of interim relief, the interim orders passed by this Court shall remain in operation and in case the petitioner succeeds before the DRAT, the amount withdrawn by the Bank shall be returned by it to her with such interest as the DRAT may in that event find fit. If the petitioner does not succeed before the DRAT, her request for refund of the amount can be considered by the next appropriate forum in accordance with law.

With these directions and keeping all rival contentions open, Writ Petition is, disposed of. No costs.

JUDGE **JUDGE**

Rgd