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

Writ Petition No. 6242 of 2015
(M/s Universal Absorbant Cotton Industry, Tq. Chikhali, Dist. Buldhana through its Proprietor Prashant D. Sdaphale and two others Vs. State of Maharashtra through District Magistrate, District Collector Office, Buldana and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

Shri P. S. Waghmare, Advocate for the petitioners
Shri S. D. Khati, Advocate for the respondent no. 2
Shri N. H. Joshi, AGP for the respondent no. 1

CORAM : Smt. V. A. Naik and
P. B. Varale, JJ.

DATE : 26-11-2015.

Heard.

By this petition, the petitioners have challenged the judgment and order of the District Magistrate, Buldana dated 20-10-2015 permitting the respondent – Bank to secure the actual possession of the secured asset through the Tahsildar, Chikhali and if need be, by the aid of the police.

The petitioner nos. 1 and 2 are the borrowers and the petitioner no. 3 is the guarantor to the loan transaction between the petitioners and the respondent – Bank by which the petitioners secured a loan in the year 2003 after mortgaging the house property belonging to the petitioner no. 3 with which we are concerned. The petitioner nos. 2 and 3 are the son and his mother respectively. Since the loan was not repaid, the respondent – Bank proceeded against the petitioners under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Securitization Act' for the sake of brevity). An original application was filed by the respondent – Bank in the Debts Recovery Tribunal for a recovery of sum of Rs. 43,05,326/- with interest. The said application was allowed with costs. The Tribunal directed the petitioners to jointly and severally pay a sum of Rupees Forty Three Lacs and odd to the respondent – Bank with interest at the rate of 13% per annum, till the date of the realization. It was declared that the outstanding amount was secured by the mortgaged properties of the petitioner no. 1 and 3 mentioned in Schedule - I of the original application which includes the house property. Liberty was granted to the petitioners to pay the outstanding dues within a period of 60 days to avoid the sale of the mortgaged properties. It is not in dispute that the outstanding dues were not paid by the petitioners and the mortgaged properties were auctioned. The said properties are sold in favour of the higher bidders and sale certificates are issued in their favour. The order of the Debt Recovery Tribunal dated 14-8-2012 was challenged by the petitioners before the Debt Recovery Appellate Tribunal and the Appellate Tribunal directed the petitioners to deposit 50% amount due and payable to the bank, towards security deposit. The said order was challenged by the petitioners in Writ Petition

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No. 3767/2014. The order of the Tribunal was set aside by this Court by partly allowing the writ petition on 9-9-2014, on the basis of the statement made by the counsel for the petitioners that the petitioners were ready to deposit 50% of the amount in the Appellate Tribunal. This Court granted a period of three weeks to the petitioners to deposit the said amount in the Appellate Tribunal. It is necessary to note that though the counsel for the petitioners had made a solemn statement on behalf of the petitioners that the petitioners would deposit 50% of the amount in the Appellate Tribunal, the order of the High Court, dated 9-9-2014 was challenged by the petitioners before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the special leave petition filed by the petitioners. With the dismissal of the special leave petition, the order of the Debt Recovery Tribunal, dated 14-8-2012, allowing the application filed by the Bank for recovery of amount with interest attained finality. The bank, then filed an application under Section 14 of the Securitization Act for the actual possession of the property through the revenue authority with the aid of the police, if necessary. By the impugned order dated 20-10-2015, the District Magistrate, Buldana allowed the application filed by the respondent – Bank. The said order is challenged by the petitioners in the instant petition.

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It is stated on behalf of the petitioners that the conditions laid down in the proviso to Section 14 of the Securitization Act have not been complied with by the respondent – Bank inasmuch as the affidavit was not filed by the respondent – Bank as required by the said proviso. It is submitted that the property, which is the subject matter of the application under Section 14 of the Securitization Act, was never mortgaged by the petitioners with the respondent – Bank.

On hearing the learned counsel for the parties and on a perusal of the documents annexed to the writ petition, it appears that it would be necessary to dismiss the writ petition with costs. The document at page no. 38 of the writ petition clearly shows that the petitioner no. 3 had mortgaged the house property with the respondent – Bank by depositing the title deeds. Also, we find that before the Debt Recovery Tribunal, it was not the case of the petitioners that the house property was never mortgaged and it was only canvassed on behalf of the petitioners that proper procedure was not followed while mortgaging property and hence it cannot be considered that the property was mortgaged. Be that as it may, the order of the Debt Recovery Tribunal has attained finality and it is held by the Debt Recovery Tribunal in its order dated 14-8-2012 that the outstanding amount of Rupees Forty Three Lacs and odd was secured by mortgaging the properties of the petitioners, as

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mentioned in Schedule – I. Admittedly, the house property is mentioned in Schedule – I. The only ground canvassed on behalf of the petitioners in this writ petition, that the house property was never mortgaged falls to the ground in view of the finding recorded by the Debt Recovery Tribunal as also the documents annexed to this writ petition. Though huge dues are liable to be paid by the petitioners to the Bank, the petitioners have not taken any steps whatsoever, after the initiation of the proceedings under the Securitization Act for payment of the dues. Proceedings are, however, filed time and again by the petitioners for ensuring that the properties of the petitioners are saved without payment of dues.

Since the claim of the petitioners that the house property was not mortgaged appears to be false and baseless, we find no reason to interfere with the order of the District Magistrate, Buldana. We dismiss the petition with costs.

JUDGE **JUDGE**

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