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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL APPLICATION No. 188 OF 2016
IN
WRIT PETITION No.5226 OF 2012

Rajesh Mahadev Shekatkar ...Applicant/Petitioner
Vs.
Dombivali Nagari Sahakari
Bank Ltd. and Ors. ...Respondents

Mr.Vijay Killedar for Applicant / Petitioner
Mr.Amit Borkar for Respondent No.1
Mr.N.P. Deshpande – AGP for Respondent Nos.3 and 4

***CORAM : V. M. KANADE &
B.P. COLABAWALLA, JJ.***

DATE : FEBRUARY 5, 2016

P.C. :

1. The delay of 193 days caused in filing this civil application is condoned. The order dated 9th June, 2015 is recalled and the writ petition is restored to the file. Civil application is allowed in terms of prayer clauses (a) and (b) and is disposed of accordingly.
2. Rule. Rule is made returnable forthwith by consent of parties.
3. The learned counsel appearing on behalf of the Petitioner has submitted

that by order dated 9.6.2015, this Court was pleased to dismiss the writ petition filed by the Petitioner for want of prosecution. It is submitted that the Petitioner was not aware of the order passed by this Court and was under an impression that the petition has been adjourned. He submits that after the bank took possession of one of the mortgage properties, after issuance of the notice, he came to know that the interim order is vacated. The learned counsel for the Petitioner submits that he had filed his vakalatnama and then he was to argue the matter but since he was busy in some other Court, he could not argue the matter when it was called out. He has submitted that the provisions under the SARFAESI Act are not applicable to Respondent No.1 Co-operative Bank and the action taken by Respondent No.2 under the SARFAESI Act is illegal and is not sustainable in law.

4. We have heard the learned counsel for the Petitioner at length. This Court in case of **Khaja Industries vs. State of Maharashtra and Anr. [2007 (6) MhLj 712]** has upheld the validity of the Notification which was issued under section 5 (c) of the SARFAESI Act. Hence, there is no substance in the submissions made by the learned counsel appearing on behalf of the Petitioner. We are bound by the observations made by the Division Bench of this Court in case of **Khaja Industries (supra.)**. Apart from that, we are informed that the Bank has already taken possession of one of the mortgage

properties situated at Sangli. The Petitioner, therefore, will have to file an application under section 17 of the Securitisation Act.

5. Since we have heard the Petitioner on merits, Writ Petition is dismissed for the reasons stated hereinabove.

B.P. COLABAWALLA, J.

V.M. KANADE, J.