

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2471 OF 2016

Phoenix Arc Pvt. Limited. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents
—
Shri Sanjay Anabhavane for the Petitioner.
Smt. M.P. Thakur, AGP for the Respondents.
—

CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 1st MARCH 2016

PC.

1. Heard the learned counsel appearing for the Petitioner and the learned AGP for the Respondents.

2. On the basis of the Application made by the Petitioner under Section 14 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short “the said Act”), the learned District Magistrate, Raigad at Alibag passed an order allowing the Application. The operative part of the said order reads thus:

“The application is allowed. The Respondent failed to repay the loan to the applicant Bank and therefore, as per section 14(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002, I hereby order to take possession of secured assets viz. Flat No.302, 3rd Floor, in the building known as “Kailash Apartment” constructed on the Plot No.02 & 4, in the Sector-12, situated at near Petrol Pump, New Panvel, Dist- Raigad and hand over the possession of the secured assets/mortgaged property to the secured creditor i.e. Applicant Bank.”

3. On the basis of the said order, the Executive Magistrate, Panvel, issued a notice to the borrowers on 14th October 2015 calling upon them to hand over the possession of the secured assets to the Circle Officer, Panvel, failing which, the forcible possession will be taken. A copy of the said notice was endorsed by the Executive Magistrate, Panvel to the Senior Inspector of Police of Panvel City Police Station who is the fourth Respondent calling upon him to provide sufficient police protection for the purposes of taking possession. It records that a date should be fixed for taking possession when services of one female and two male constables should be requisitioned.

4. It appears that as the possession was not handed over, on 28th January 2016, the Circle Officer, Panvel addressed a letter to the Tahsildar, Panvel requesting the Tahsildar, Panvel to apply to the Deputy Commissioner of Police, Zone-II, Panvel for grant of police protection. On 2nd February 2016, a letter was addressed by the Executive Magistrate, Panvel to the Senior Inspector of Police (fourth Respondent) to provide police protection on 20th February 2016 for execution of the orders passed by the learned District Magistrate. A copy of the said

letter was delivered in the office of the Deputy Commissioner of Police, Zone-II, Panvel on 6th February 2016. As no arrangement for grant of police protection was made, it appears that on 28th February 2016, even the Petitioner addressed a letter to the Deputy Commissioner of Police requesting him to grant police protection. The learned AGP states that the third and fourth Respondents are personally present in the Court. Their contention is that the Application for grant of police protection was received belatedly on 28th February 2016. It is stated that the third Respondent has subsequently recommended the grant of police protection on which an appropriate decision will be taken.

5. Section 14 of the said Act provides that on an Application being made by the Secured Creditors, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, is empowered to take possession of the secured assets and forward such assets to the Secured Creditors. Sub-section (1-A) of Section 14 of the said Act empowers the District Magistrate or the Chief Metropolitan Magistrate to authorise any officer subordinate to him to take possession of the secured assets and forward such assets to the Secured Creditors. Sub-section (2) of Section 14 of the said Act specifically confers the powers on the Chief Metropolitan Magistrate/District Magistrate to take or cause to be taken such steps and use, or cause to be used such force as may be necessary for taking over possession of the secured assets and documents.

6. In the present case, there is already an order made by the learned District Magistrate under Section 14 of the said Act on the Application made by the Petitioner. That order is made way back on 25th August 2015. The Executive Magistrate, Panvel was nominated by the District Magistrate in accordance with Sub-section (1A) of Section 14 of the said Act. The Executive Magistrate, Panvel requested for grant of police protection by a notice dated 14th October 2015 and by addressing a letter dated 2nd February 2016 to the fourth Respondent who is Senior Police Inspector of Khandeshwar Police Station.

7. Perhaps, the fourth Respondent is under a wrong impression that the police aid was sought by the Petitioner. As stated earlier, the District Magistrate or the Chief Metropolitan Magistrate or the officer nominated by them under Sub-section (1A) of Section 14 of the said Act, as the case may be, are entitled to use the force for taking over possession of the secured assets. It is obvious that to avoid any breach of peace, the Executive Magistrate, Panvel requested for grant of adequate policed protection. In our opinion, the Executive Magistrate, Panvel has performed his statutory duty under the provisions of Section 14 of the said Act and, therefore, the police authorities were under an obligation to provide requisite police aid to the Executive Magistrate, Panvel.

8. Needless to add that to enable the police authorities to make arrangements for providing police protection, advance notice or intimation will have to be served by the officer empowered under Section 14 of the said Act.

9. We find that this issue arises in many cases. The orders passed under Section 14 of the said Act are not implemented as sufficient police protection is not provided. Considering the nature of the powers exercised by the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, and the officer authorized by them under Sub-section (1A) of Section 14 of the said Act, it is necessary that adequate police protection should be provided to them inasmuch as they are entitled to use the force as provided in Sub-section (2) of Section 14 of the said Act. We, therefore, propose to direct the office of the Director General of Police to issue necessary circular/directions to the police officers enjoining them to grant police protection for the implementation of the orders under Section 14 of the said Act.

10. Hence, we dispose of the Petition by passing the following order.

ORDER :

- (a) We direct the Executive Magistrate (Tahsildar), Panvel to give an advance intimation of atleast one week to the fourth Respondent of the date and time fixed for implementation of the orders passed under Section 14 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002;
- (b) On receiving the said intimation, the fourth Respondent shall make arrangements for providing police assistance as stated in the notice dated 14th October 2015 issued by the Executive Magistrate, Panvel;
- (c) We direct the Director General of Police to issue a circular or direction inviting attention of the Police Officers to the fact that they are under an obligation to provide police protection to the District Magistrate or the Chief Metropolitan Magistrate or their nominees appointed under Sub-section (1A) of Section 14 of the said Act for the purposes of

implementation of the orders passed under Section 14 of the said Act. Necessary circular/directions shall be issued within a period of two months from today;

- (d) The Petition is disposed of on above terms;
- (e) For reporting compliance, the Petition shall be listed on 12th April 2016 under the caption of “Directions”.

(C.V. BHADANG, J)

(A.S. OKA, J)