IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6649 OF 2016

1. Mr. Prasanta K. Patnaik & Anr. ... Petitioners

Vs

1. The Sahebrao Deshmukh Co-op.
Bank Ltd. & Anr. ... Respondents

Mr. J. Choksi with Mr. C.D. Agrawal i/b Legal Catalyst for the Petitioners.

Mr. Sanjay Anabhavane for the Respondent No.1.

Mr. G.R. Dwivedi with Mr. Parag Vyas for the Respondent No.2 – Union of India.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

TUESDAY, 30TH AUGUST, 2016

P.C. :

1. This petition challenges a Notification dated 28th January, 2003. The challenge is at the instance of the petitioners who are borrowers and they urge that the first respondent – Sahebrao Deshmukh Cooperative Bank Limited is a Cooperative Society registered under the provisions of the Cooperative Societies Act, 1960. It is governed by it.

Respondent No.1 cannot resort to and invoke the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and, therefore, the invocation from its inception is unconstitutional, illegal, null and void. This Notification to the extent it applies to cooperative banks should be declared as such.

2. Consequentially, all the measures initiated by the first respondent-bank for recovery of the sums from the petitioners should also be quashed and set aside for they are under the SARFAESI Act.

3. Our attention is fairly invited by the learned counsel appearing for the petitioners to the order below application under section 14 of the Securitisation Act. That order was passed in Securitisation Application No. 278 of 2013 by the District Magistrate, Thane. It is held in the said order dated 2nd November, 2015, that the Tahsildar, Thane, should take possession of the secured asset and more particularly described in the order at page 23.

4. The petitioners have contended before us that though there is a remedy of approaching the Tribunal under the Securitisation Act, what has been done is that a Securitisation Application No.368 of 2013 was filed. On that, an interim order was passed after hearing both sides. By that interim order dated 15th January, 2016, the respondent No.1-bank was restrained from taking physical possession provided the petitioners deposit a sum of Rs.15,00,000/- on or before 25th January, 2016 and further sum of Rs.15,00,000/- on or before 15th February, 2016. In default, the interim order was to stand vacated.

5. It is at such a stage that the Writ Petition has been filed and raising the above challenge.

6. After hearing both sides what we have noted is that the petitioners desire to put an end to the matter amicably. They have filed an additional affidavit today in which it is stated that a sum of Rs.43,00,000/- approximately has been paid. The bank had accepted a request for a one-time settlement and the condition on which it accepted is that the petitioners have to

pay a sum of Rs.1,53,08,640/-. That would be accepted in full and final settlement of the bank's dues and thereafter the account would be treated as closed. The petitioners have now filed this affidavit-cum-undertaking and paragraphs 4, 5 and 6 thereof read as under :

> *"4. The entire amount mentioned above would be paid by the purchaser directly to the Bank on or before 30th October,2016.*
>
> *5. I undertake to pay the Bank from the sale proceeds or from my own funds the amount of Rs.1,53,08,640/- on or before 30th October, 2016.*
>
> *6. I further undertake that if I fail to pay the amount of Rs.1,53,08,640/- on or before 30th October, 2016, I shall hand over vacant and peaceful possession of my residential property without any further dispute in that respect."*

7. We take this affidavit on record.

8. We indicated to Mr. Choksi appearing for the petitioners that we are not inclined to allow any sale of the property by the petitioners. That would mean though the title deeds are with the bank, the residential immovable property constitutes the security of the bank, but it would be sold by some private arrangement and the bank should consent to it. We stated very clearly that this would be rendering the SARFAESI Act nugatory.

9. Thereafter, Mr. Choksi, on instructions, stated that on or before 30th October, 2016, the petitioners would deposit a sum of Rs.1,53,08,640/- from the petitioners' own funds.

10. With regard to this suggestion of Mr. Choksi, we called upon the respondent No.1's advocate and orally to take instructions whether the bank is agreeable to this arrangement.

11. It is stated by Mr. Anabhavane, learned advocate for the respondent No.1 that the bank is ready and willing to accept the amount of Rs.1,53,08,640/- in full and final settlement of its

claim provided it is paid on or before 30th October, 2016. Thereafter, the bank's proposal for one-time settlement would stand automatically withdrawn. Mr. Anabhavane submits that the bank should, therefore, be permitted and in case of default, to take physical possession of the immovable property and in furtherance of the order passed by the District Magistrate, Thane.

12. After we have noted both requests, we find the bank's conduct to be reasonable. We, therefore, direct the petitioners, in terms of their undertaking, to deposit the sum of Rs.1,53,08,640/- before 30th October, 2016. After that sum is deposited and paid, the bank should accept it in full and final settlement of its claim and release all the title deeds in respect of the immovable property to the petitioners. In default, the bank should not be required to make a fresh application under section 14, but may enforce the order passed on 2nd November, 2015, by the District Magistrate, Thane. The petitioners shall then be dispossessed from the immovable property and with police assistance. The nearest Police Station shall render all assistance to the Tahsildar and the bank in obtaining physical

possession of the immovable property.

13. We also record the undertaking of Mr. Choksi that the petitioners have, in view of the above settlement, withdrawn the Securitisation Application on which the interim order was passed by the Debts Recovery Tribunal, Mumbai. The Securitisation Application No. 368 of 2013, therefore, stands dismissed as withdrawn forthwith.

14. We again clarify that the petitioners and after the default, if any, shall not be entitled to revive this Securitisation Application nor shall be permitted to raise any challenge to the Notification dated 28th January, 2003 or the securitisation measures. That would not be permissible even by invoking this Court's jurisdiction.

15. The petitioners' counsel, on instructions, stated that the petitioners are in physical possession, particularly the petitioner No.1 and his family. They should not be dispossessed from the residential flat / immovable property till 30th October, 2016. In view of this statement, we direct that till 30th October,

2016, the petitioners can continue to reside in the residential flat provided they do not induct any third party therein or part with possession thereof or transfer it in any manner.

Ordered accordingly. Writ petition stands disposed of.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***