

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

WRIT PETITION NO. 2991 OF 2016

The Cosmos Co-operative	}	
Bank Ltd.	}	Petitioner
versus		
Union of India and Ors.	}	Respondents

Mr. Sanjiv Punalekar i/b. M/s. PRS Legal
for the petitioner.

Mr. Mayur Khandeparkar with Mr. Arun
Panickar for respondent nos. 4 to 8.

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

DATED :- SEPTEMBER 30, 2016

P.C. :-

We have heard Mr. Punalekar appearing for the petitioner.

We have perused the writ petition and annexures with his
assistance.

2) The petition proceeds on the footing that after invoking the
SARFAESI Act as a secured creditor and proceeding against the
borrowers, who had defaulted in repayment of the dues of the
petitioner bank, steps were also taken to obtain physical
possession of the mortgaged security.

3) The mortgaged security is described as Shop Nos. 5 and 6 on
the ground floor of Parle Abhishek Co-operative Housing Society
Ltd., Vallabhnbhai Road, Vile Parle (W), Mumbai - 400 056. These

two shops are owned by respondent nos. 5 to 7 and 8 and 9. The petitioner bank claims that a sum of Rs.12.34 crores is due and payable. Therefore, after serving notice under section 13(2) of the SARFAESI Act, measures under section 13(4) were taken. The learned Chief Metropolitan Magistrate was requested to assist the bank in obtaining physical possession of the premises. He passed an order on 18th June, 2015 in that behalf. Thereafter, the authorised officer, with the assistance of the staff provided by Santacruz Police Station, obtained possession of the two shops on 3rd November, 2015. Locks were placed on these Shop Nos. 5 and 6 and notice was displayed. Equally, a security guard was posted. However, Shop Nos. 4, 5, 6 and 7 are adjacent to each other and all the shops have separate entry. Shop Nos. 4 and 5 had no wall dividing them and Shop Nos. 6 and 7 were equally placed. Once this was a continuous un-demarcated area as is stated at page 8 of the paper book, then, the owners of Shop Nos. 4 and 7, who are stated to be parties associated with the borrowers and guarantors, according to the petitioners, have sought to interfere and obstruct the possession of the authorised officer in respect of the shops/immovable properties, which were mortgaged.

4) The acts of the adjacent shop keepers/owners laid to filing of complaint, but we do not think that the officials of the Municipal Corporation of Greater Mumbai or the police station were in error for the petitioner will have to adopt appropriate proceedings so as to protect their right, title and interest in the secured assets. For that and when the petitioner itself projects disputed questions of fact, a writ petition under Article 226 of the Constitution of India is not a remedy. Relying upon all documents, including the panchanama drawn at the site, the petitioner can establish and prove that there is an act of trespass or obstruction to its lawful possession. Equally, the authorised official can also be impleaded as a supporting party. When these remedies are available, we do not think that in writ jurisdiction we can assist the petitioner. The writ petition is devoid of merits. It is dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)