IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4837 OF 2015

Kusum Rajaram Suryawanshi …. Petitioner
V/s.
The State of Maharashtra,
Through the Secretary,
Department of Co-operation,
Mantralaya, Mumbai & Anr. …. Respondents

Mr. Amitkumar D. Sale for the Petitioner.

Mr. Nikhil Rajani, i/by M/s. V. Deshpande & Co., for Respondent No.2.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 26TH JULY, 2016.

P.C. :

1. After hearing both sides and once we find that the Petitioner has an alternate equally efficacious remedy, i.e. Appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, *(for short "SARFAESI Act")*, then, by keeping open all contentions, we can relegate the Petitioner to that remedy. It is equally efficacious and all contentions, including on the maintainability of the proceedings at the instance of a Co-operative Bank, can be raised before the Debt Recovery Appellate Tribunal.

2. The Petitioner's counsel submits that the second Respondent-Bank is likely to dispossess the Petitioner from the residential premises at Colaba, Mumbai. Since it is the residential premises of the Petitioner and

her family is residing therein, including her school going grand-child, it is prayed that a reasonable time be granted to the Petitioner to deposit the sum and to avoid dispossession.

3. This request is opposed by the learned counsel appearing for the second Respondent-Bank.

4. After hearing both sides and only in order to protect the Petitioner against dispossession from the residential property / premises at Colaba, Mumbai, we direct that, if within a period of four weeks from today, the Petitioner deposits with the second Respondent-Bank 25% of the amount due and payable and balance 25% within four weeks thereafter, the Petitioner shall not be dispossessed in pursuance of the measures under Section 13(4) of the SARFAESI Act for a period of eight weeks from today.

5. In the event there is a default in making deposit of the initial sum, this protection will come to an end automatically and without any further reference to the Court.

6. To test the bonafides, let the Petitioner not be dispossessed for a period of four weeks from today.

7. Needless to clarify that, the Petitioner's compliance with our directions will be without prejudice to her rights and contentions, including in any appeal / application before the Debt Recovery Appellate Tribunal.

8. The Writ Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]   [S.C. DHARMADHIKARI, J.]