

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

WRIT PETITION (ST) NO. 30179 OF 2016

**Praveen Kashinath Husing }
and Anr. } Petitioners
 versus
Union Bank of India and Ors. } Respondents**

Mr. S. G. Deshmukh i/b. Mr. Ramdas A.
Shelke for the petitioners.

Ms. Sushma Bhende - AGP for respondent
no. 8.

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

DATED :- OCTOBER 27, 2016

P.C. :-

1. The petitioners claim that they are totally unaware of the dealings with the first respondent bank. Those are at the instance of some third party. The petitioners have been proceeded against because the bank claims that they guaranteed the repayment of the dues of the borrower. The petitioners are aggrieved and dissatisfied with an order passed by the Collector and District Magistrate, Thane, dated 25th April, 2016 under section 14 of the SARFAESI Act. They became aware of the communication dated 30th April, 2016, styled as a notice, but pasted on their property only on 13th October, 2016 that they

would be dispossessed in the event they do not voluntarily handover possession of the immovable property, more particularly described in the notice, copy of which is at page 17 of the paper book. It is upon such a petition and argued on the footing that sub-section (3) of section 14 of the SARFAESI Act creates a bar in entertaining any proceedings at the instance of parties like the petitioner that Mr. Deshmukh learned counsel appearing for the petitioners would submit that the petitioners have not been dispossessed though such a notice was pasted on their property. The petitioners are now made aware of a judgment of two Judge Bench of the Hon'ble Supreme Court of India in the case of *Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors*¹. That judgment says, according to the petitioners' counsel, that the remedy of filing a writ petition under Article 226 of the Constitution of India cannot be resorted to even when the bar under section 14(3) is pleaded. The only remedy available to the parties is to approach the DRT and invoke its jurisdiction.

2. We have no benefit of the presence of the respondents, save and except the learned AGP.

¹ (2011) 2 SCC 782

3. In the light of the authoritative pronouncement of the Hon'ble Supreme Court of India, we cannot entertain this writ petition. The petition involves disputed questions of fact and particularly of lack of knowledge of any dealings or the guarantee being executed by the petitioners not to secure the dues of the borrower against whom the bank has proceeded. Such disputed questions cannot be resolved in our limited jurisdiction.

4. We dispose of this petition with liberty to the petitioners to avail remedy under section 17 of the SARFAESI Act.

5. The petitioners' counsel prays that if the petitioners are still not dispossessed, they may be protected against the dispossession so as to enable them to approach the tribunal.

6. Having perused the writ petition and finding that the petitioners have pleaded that the impugned notice was pasted on 13th October, 2016 and granting them 15 days time to handover peaceful possession of the property, which would expire on 28th October, 2016, we are of the opinion that interest of justice would be served if the petitioners are not dispossessed for a period of four weeks from 28th October, 2016, which is stated to be the stipulated date on which the possession can be taken. Therefore, we protect the petitioners' possession, if they are not already

dispossessed, till 2nd December, 2016. They shall not be dispossessed until that date, if not already dispossessed.

7. With the aforesaid directions, the writ petition is disposed of. This order is without prejudice to the rights and contentions of all parties.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)