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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CRIMINAL APPELLATE JURISDICTION******WRIT PETITION No. 3969 OF 2016******Sunil Mohan Lahori and Ors.******....Petitioners******Vs.******Corporation Bank and Anr.******....Respondent***

Mr.A.S. Ramesan a/w. Mr. S.U. Patro for the Petitioners

Ms. Rathina Maravarman for Respondent No.1

CORAM : V. M. KANADE &***Ms. NUTAN D. SARDESSAI, JJ.******DATE : NOVEMBER 18, 2016******P.C. :***

1. Heard the learned counsel appearing on behalf of the Petitioners and the learned counsel for Respondent No.1 Bank.
2. The Petitioners are aggrieved by an order passed by the Chief Metropolitan Magistrate under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ' SARFAESI Act). The learned counsel for the Petitioners submit that the impugned order is liable to be set aside firstly on the ground that the Learned Magistrate has not considered the

fact that the property in question is not properly numbered. Secondly, it is submitted that the property is not registered and it is not secured by mortgage. Thirdly, it is submitted that the Memorandum of Entry in the application is not properly mentioned. Fourthly, it is submitted that the reply to the notice under section 13(2) of the SARFAESI Act has not been given. It is also submitted that the Petitioners had allegedly committed fraud and that aspect also has not been considered. It is submitted that no proper explanation has been given by the Bank.

3. In our view, the Learned Magistrate while hearing the application under section 14 is not under any obligation to decide these issues on merits. Secondly, the Petitioners have an alternate remedy of filing an appeal under section 17 and they can challenge the measures which are taken by the Bank for obtaining possession. Therefore, we are not inclined to set aside the order passed by the Magistrate under section 14 of the SARFAESI Act. The Petitioners have a right to file an appeal under section 17 of the SARFAESI Act, unless they have already filed that appeal. Reserving the said right of the Petitioners, the writ petition is disposed of.

4. At this stage, the learned counsel for the Petitioners seeks stay of

the order passed by the Chief Metropolitan Magistrate by granting protection. Request for granting of stay is declined. Liberty is granted to the Petitioners to approach the DRT.

Ms. NUTAN D. SARDESSAI, J.

V.M. KANADE, J.

Vaishali Tikam