

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

WRIT PETITION NO. 3028 OF 2016

Bank of Maharashtra	}	Petitioner
versus		
State of Maharashtra	}	Respondent

Mr. Sanjay Anabhawane for the
petitioner.

Mr. P. G. Sawant - AGP for respondent
no.1.

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

DATED :- OCTOBER 21, 2016

P.C. :-

1. Having heard both sides, we find that the learned Chief Metropolitan Magistrate, Esplanade, Mumbai has committed an apparent error in rejecting the application under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. That application was made to seek assistance for taking possession of a flat, more particularly described in the impugned order. The then learned Chief Metropolitan Magistrate, Mumbai, though aware of the fact that the application was accompanied by an affidavit and all documents on record, has unnecessarily taken

a hyper-technical view. He should have verified that in the memorandum of record of deposit of title deeds, there may not be reference to the property in entirety, but there are other documents. If the title deeds pertain to the flat, which is described in the impugned order itself, then, we do not see any reason for rejecting the application. There is no contest nor is there any lis in the sense contemplated by the learned Chief Metropolitan Magistrate.

3. As a result of the above discussion, the impugned order dated 28th April, 2015 is set aside. The application, namely, Case No. 19/SA/2015 stands restored to the file of the learned Chief Metropolitan Magistrate, Mumbai for being decided afresh and in accordance with law uninfluenced by the earlier order. The writ petition is allowed in these terms. There would be no order as to costs.

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