

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2840 OF 2016

Infonet IT Solutions (I) Ltd.	}	Petitioner
versus		
The Board of Directors of	}	
Union Bank of India	}	
and Ors.	}	Respondents

Mr. Mathews Nedumpara for the petitioner.

Mr. Anup Khaitan i/b. M/s. Anup Khaitan and Co. for respondent nos. 1 and 2.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATED :- OCTOBER 17, 2016**

P.C. :-

1. This petition has been moved on the apprehension of immediate dispossession. The notice under section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) has been issued at the instance of the second respondent bank. The petitioners are apprehending that dispossession would be by today. In fact, the officials have reached the site but have not physically dispossessed the petitioner from the immovable property.

2. On notice, the advocate for the bank has appeared. It is stated that with great difficulty, the appointment of officer to take possession has been obtained. If today's appointment is postponed, then, it is quite likely that the concerned official may not be available.

3. Mr. Nedumpara has raised a fundamental point, according to him and going to the root of the case. He states that sub-section (1) and sub-section (1-A) of section 14 of the SARFAESI Act do not contemplate any Advocate Commissioner, but an officer of the court or an authority, namely, the Chief Metropolitan Magistrate or the Collector and District Magistrate. In the present case, at page 85 is the notice issued by the Advocate Commissioner. He is, therefore, not empowered to carry out the job.

4. We inquired from both sides about alternate remedy under section 17 of the above Act and it is clearly stated that though the Presiding Officer of the DRT - II is unavailable today, the charge is with the Presiding Officer of the DRT - I.

5. Mr. Nedumpara submits that though the remedy cannot be said to be alternate and efficacious, yet, he would avail of the same without prejudice to the rights and contentions of the petitioner. The petitioner would make an application to the

Presiding Officer to protect its possession, but sufficient time be given for that purpose.

6. We take care, while balancing rights and equities, of the apprehension of the second respondent bank that it would be difficult to obtain a fresh appointment of the concerned officer. We, therefore, direct without prejudice to the rights and contentions of both sides that let the date of delivery of possession of the secured assets be postponed till 26th October, 2016. Within the period stipulated, namely, from today till 26th October, 2016, the petitioner is free to make an application before the DRT and the Presiding Officer, who is in-charge so that it can obtain urgent ad-interim/interim protection. We keep open all contentions of the parties. We do not express any opinion particularly on what is pointed out by the petitioner's counsel as a fundamental flaw.

7. The writ petition is disposed of and with direction to postpone the appointment for taking possession as above. Needless to clarify that in the event the petitioner does not avail of this opportunity or fails to get any ad-interim/interim protection by the above date, our order will come to an end, whereafter, the bank can proceed to act in terms of the notice.

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