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

WRIT PETITIO NO. 269 OF 2016

Edayar Zinc Ltd. and Anr.	**}**	**Petitioners**
versus		
Punjab National Bank Ltd. and Ors.	**}**	**Respondents**

Mr. S. U. Kamdar – Senior Advocate with Ms. Sneha Jaisingh and Ms. P. Vakil i/b. M/s. Bharucha and Partners for the petitioners.

Mr. Fraser Alexander i/b. M/s. Majumdar and Partners for respondent no. 1.

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

DATED :- JUNE 23, 2016

P.C. :-

When this writ petition was placed before us and called out today, it was fairly stated that the challenge to the impugned orders arises out of an issue of law. That issue of law was canvassed on the earlier occasions and particularly whether the Sick Industrial Companies (Special Provisions) Act, 1985 is inconsistent with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and whether the SARFAESI Act would prevail over the same or not?

2) Mr. Kamdar, learned Senior Counsel appearing for the petitioners, in all fairness, states that in the light of the decision of the Hon'ble Supreme Court of India in the case of *Madras Petrochem Limited and Anr. vs. Board for Industrial and Financial Reconstruction and Ors.*[1], the above legal question stands concluded against the petitioners and in favour of the first respondent.

3) Mr. Kamdar then submits that in pursuance of the measures under the SARFAESI Act, the first respondent bank may proceed to take action under section 14(1) and dispossess the petitioner from the immovable properties enabling them to be put up for sale. Mr. Kamdar submits that for a limited duration and to enable the petitioners to challenge this order before the Debt Recovery Appellate Tribunal, the physical possession should not be disturbed.

4) This request is opposed by respondent no. 1 and it is submitted that the banks dues are outstanding and the debt is mounting.

5) After having heard both sides, we direct that in the event any measures under section 13(4) of the SARFAESI Act are taken and assistance of the District Magistrate/Chief

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Metropolitan Magistrate is sought to take possession of the immovable properties and eventually put them up for sale, the first respondent bank shall only take symbolic possession of these premises in pursuance of such an order.

6) This order and direction shall remain in force for a period of six weeks from today. Within this period, the petitioners must adopt appropriate proceedings so as to protect their physical possession.

7) Needless to clarify that this order and direction is without prejudice to the rights and contentions of respondent no.1 bank. We also clarify that we have expressed no opinion on the contentions as far as merits of the impugned order.

8) With the aforesaid directions, the writ petition is disposed of. No costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)