FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2839/2016

(M/S D.K. SORTEX, AMGAON & OTHERS **VERSUS** STATE BANK OF INDIA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri R.H. Agrawal, counsel for the petitioners.
Shri M. Anilkumar, counsel for the R-1.

CORAM : SMT.VASANTI A. NAIK AND MRS. SWAPNA JOSHI, JJ.
DATE : JUNE 15, 2016.

By this writ petition, the petitioners have challenged the interim order passed by the Debts Recovery Tribunal, Nagpur, dated 11.05.2016 rejecting the prayer made by the petitioners for grant of interim relief. The petitioners have also challenged the order of the District Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

We are not inclined to entertain the writ petition against the order of the Debts Recovery Tribunal, dated 11.05.2016 refusing to grant the interim relief. The petitioners can avail the alternate remedy of filing an appeal before the Debts Recovery Appellate Tribunal.

In respect to the challenge made by the petitioners to the order of the District Magistrate under Section 14 of the Act, the counsel for the petitioners has two submissions to make. It is the case of the petitioners that the authorized officer has not sworn the affidavit filed before the District Magistrate. It is submitted that it would be necessary for the authorized officer to affirm the affidavit as required by the provisions of Section 14(1)(a) of the Act. It is submitted that if at all it is held that the affidavit is filed by the authorized officer, it should be held that it is faulty. Secondly, it is stated that the fact that the property is tenanted is not mentioned in the affidavit and, hence, the impugned order is liable to be set aside.

We do not find any merit in both the submissions made by the petitioners for effectively challenging the order of the District Magistrate under Section 14 of the Act. On a perusal of the affidavit filed before the Debts Recovery Tribunal and the affidavit filed before the District Magistrate, we find that the affidavits before both the authorities are signed by Shri Shrikant Nandurkar, who is the Chief Authorized Officer of the concerned bank. Also, the petitioners had not raised an objection before the District magistrate that the affidavit is not signed by the authorized officer. We find that the said submission is a lame attempt for challenging the order of the District Magistrate. On a perusal of the affidavits filed before the Debts Recovery Tribunal and before the District Magistrate on behalf of the bank, we find that it is signed by the authorized officer Shri Shrikant Nandurkar. We do not find that the affidavit is faulty. All the pre-conditions that are stipulated in Section 14(1)(a) of the Act are mentioned in the affidavit. We do not find that it would be necessary to mention in the affidavit under Section 14(1)(a) of the Act that the property is tenanted. It is not the case of the petitioners that the affidavit does not mention the eight facts or circumstances that are required to be mentioned in the affidavit as per Section 14(1)(a) of the Act. There is no merit whatsoever in either of the submissions made on behalf of the petitioners for challenging the order of the District Magistrate.

In the result, the writ petition, insofar as it challenges the order of the District Magistrate fails and is dismissed with no order as to costs. As regards the impugned order of the Debts Recovery Tribunal, the petitioners are free to challenge the same before the appropriate forum.

The prayer made by the learned counsel for the petitioners for staying the order of the District Magistrate only in respect of one of the properties, i.e. the house property/residential property by a period of two weeks for approaching the Debts Recovery Appellate Tribunal, is granted. We make it clear that the stay would cease to operate after the expiry of the period of two weeks. We further make it clear that the stay is granted in respect of residential property only.

Order according. No costs.

JUDGE **JUDGE**

APTE