

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3240/2016

Kishor s/o Gopichand Ukey

...Versus...

Addl. District Magistrate, Collectorate Compound, Nagpur and others

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

Court's or Judge's orders

Shri C.G. Barapatre, Advocate for petitioner
Shri N.R. Rode, AGP for respondent no.1
Shri S.V. Bhutada, Advocate for respondent no.2

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 21.07.2016

By this writ petition, the petitioner challenges the order of the District Magistrate, dated 20.5.2016 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

It is the case of the petitioner that the petitioner is a tenant in the house property, that is, mortgaged by the respondent nos.3 and 4 to the respondent no.2 - Bank on 4.10.2012. It is stated that on 4.10.2012, the petitioner, who was the owner of the house property, had sold the same to the respondent nos.3 and 4. It is stated that after the sale-deed was executed, the petitioner was inducted as a tenant in the property. It is stated that the respondent no.2 - Bank has made a false

statement in the application filed by the Bank before the District Magistrate for securing the possession of the property that there are no tenants in the property. It is stated that though the respondent nos.3 and 4, the debtors, that had defaulted in payment of the debt of the respondent no.2 – Bank, may not have objection to the Bank securing the possession of the property, the petitioner, who is a tenant in the house property, has an objection to the same. It is stated that the possession of the petitioner, who is a tenant in the property, is liable to be protected.

The learned Counsel for the respondent no.2 – Bank has strongly opposed the prayer made by the petitioner in the instant petition. It is stated that the District Magistrate has rightly passed an order under Section 14 of the Act so as to ensure that the Bank secures the actual possession of the mortgaged property. It is stated that though the petitioner was the owner of the property, he had sold the property to the respondent nos.3 and 4 at 11:20 a.m. on 4.10.2012 and within a few minutes from the execution of the sale-deed, the said property was mortgaged by the respondent nos.3 and 4 with the respondent no.2 – Bank while securing the housing loan. It is stated that the respondent nos.3 and 4 had defaulted in payment of the loan amount and therefore, appropriate action was initiated against the respondent nos.3 and 4 under the provisions of Sections 13 and 14 of the Act. It is stated that it is clear from the perusal of the sale-deed, executed by the petitioner himself that the vacant possession of the property was delivered to the respondent nos.3 and 4 before 4.10.2012. It is stated that the case of the petitioner that he is the tenant of the property is absolutely false and baseless and on such

a false claim, the petitioner cannot effectively challenge the order of the District Magistrate.

On hearing the learned Counsel for the parties, we find that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. Admittedly, the petitioner, who was the owner of the property, has sold the property to the respondent nos.3 and 4 on 4.10.2012. The sale-deed, a copy of which is placed on record, clearly recites that the vacant possession of the property was delivered by the petitioner to the respondent nos.3 and 4. The petitioner claims that he was inducted as a tenant in the property by the respondent nos.3 and 4. However, no document whatsoever much less a lease-deed is produced on record to show that the petitioner is the tenant in the said property. The respondent nos.3 and 4 have not raised any objection to the securing of actual possession of the property before the District Magistrate and the matter went undefended, so far as the respondent nos.3 and 4 are concerned. The petitioner has, without any basis, raised an objection that the petitioner is a tenant in the property and his possession is liable to be protected. We find nothing on record to show that the petitioner was inducted as a tenant in the property by the purchasers, that is, the respondent nos.3 and 4 before the mortgage-deed was executed by the respondent nos.3 and 4 in favour of the respondent no.2 - Bank. We do not find any illegality in the order of the District Magistrate in helping the respondent no.2 – Bank in securing the actual possession of the property under Section 14 of the Act.

Since the order of the District Magistrate is just and proper, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

Wadkar

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of original signed order.

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