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

WRIT PETITION NO. 6517/2016
(ALOK ULHAS JOSHI & ANOTHER **VERSUS** GOVERNMENT OF MAHARASHTRA & OTHERS)

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

Shri M.M. Sawang, counsel for the petitioners.
Shri A.S. Fulzele, Additional G.P. for the R-1.
Shri A.T. Purohit, counsel for the R-2.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.
DATE : NOVEMBER 17, 2016.

By this writ petition, the petitioners challenge the order of the District Magistrate, Akola, dated 28.09.2016 under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The petitioners were the guarantors to a loan that was advanced by the respondent-Bank to M/s Gomti Milk and Food Private Limited. The borrower defaulted in making the payment of the debt. Proceedings were initiated by the bank against the borrower and the petitioners, i.e. guarantors, under the provisions of the Act. After taking steps under section 13 of the Act, an application was made by the respondent-Bank before the District Magistrate, Akola for securing the possession of the property of the petitioners. Since the District Magistrate passed an order in favour of the bank under Section 14 of the Act, the said order is impugned by the petitioners in the instant petition.

Shri Sawang, the learned counsel for the petitioners, challenges the order of the District Magistrate only on one ground. It is stated that the respondent-Bank cannot be permitted to take action under the Act against the guarantors before taking action against the borrower or principal debtor for realization of the loan amount.

Shri Purohit, the learned counsel for the respondent no.2, opposes the prayer made in the writ petition by supporting the impugned order. It is stated that it is well settled that the liability of a guarantor is co-extensive with that of a principal debtor and it is the prerogative of the creditor alone whether he should move against the principal debtor first or the surety or guarantor for the realization of the amount. The learned counsel relied on the judgment of the Hon'ble Supreme Court reported in **(2015) 7 SCC 337** (*Central Bank of India Versus C.L. Vimla & Others*) with (*M.A. Krishnamurthy Versus C.L. Vimla & Others*) to substantiate his submission.

We are not inclined to accept the only submission made on behalf of the petitioner for challenging the impugned order. It is well settled that the liability of a guarantor is co-extensive with that of a principal debtor and it would be the choice of the creditor to proceed either against the debtor or the guarantor, first in point of time. There is nothing wrong on the part of the respondent-Bank in filing proceedings against the petitioners under Section 14 of the Act. Further it is not disputed that recovery proceedings are filed against the principal debtor-borrower, also.

Since there is no merit in the only submission made on behalf of the petitioners for challenging the impugned order, the writ petition is dismissed with no order as to costs.

JUDGE **JUDGE**

APTE