

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.715 OF 2017**

Mr. Eddie F. Zouza Tavares
Major, aged 55, married,
r/o. H.No.1001, 'Solar dos Silva's',
Tolecanto, Velim, Salcete, Goa 403 723. Petitioner

V/s

1. The Saraswat Co-operative Bank Ltd.,
Through its authorized officer,
having office at Mushtifund Saunstha
Bldg., Dr. Dada Vaidya Road,
Panaji, Goa – 403 001.
2. The District Magistrate & Collector,
North Goa, having office at
Magistrate Branch Collectorate
Building, Panaji, Goa – 403001.
3. The Mamlatdar of Tiswadi Goa,
Having office at Collectorate Building,
Panaji, Goa, through Circle
Inspector, Goa – 403001.
4. Mr. Lyndon Mendonca,
Major, married, having address
at UG-1, 5A, Model Status,
Dona Paula, Tiswadi, North Goa. Respondents

Ms. R. Kantak, Advocate for the Petitioner.
Shri U.R. Timble, Advocate for the Respondent No.1.
Shri Sagar Dhargalkar, Additional Government Advocate for
the Respondents No.2 & 3.

**CORAM : F.M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date : 8th August, 2017

JUDGMENT : (Per F.M. Reis, J.)

Heard Ms. R. Kantak, learned Counsel for the petitioner, Shri U.R. Timble, learned Counsel for the respondent no.1 and Shri S.G. Dhargalkar, learned Additional Government Advocate for the respondents no.2 & 3.

2. Rule. Heard forthwith with the consent of the learned Counsel. The learned Counsel appearing for the respondents waive service.

3. The short grievance of the petitioner is that in exercise of powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 Act ('the Act' for short), the Judicial Magistrate - respondent no.2 has taken possession of the subject flat alongwith the belongings therein and handed over to the respondent no.1. The petitioner claims to be a tenant of the subject premises and allege that the belongings in the subject premises belong to him. It is pointed out by the learned Counsel appearing for the petitioner that as such the respondent no.1 be directed to

hand over the belongings to the petitioner.

4. On the other hand, Shri U.R. Timble, learned Advocate for the respondent no.1 points out that the respondent no.1 has no claim over the belongings and that such belongings are to be delivered to the person who is so entitled. The learned Counsel, as such, submits that before directing any release of such belongings an adjudication with regard to the claim of the petitioner would have to be undertaken.

5. The learned Additional Government Advocate however pointed out that an application to that effect was filed by the petitioner which came to be disposed off on the ground that the petitioner should approach appropriate Court.

6. Upon hearing the learned Counsel, we find that a person who puts up opposes the delivery of possession when the respondent no.2 exercises the powers under Section 14 of the said Act can raise such claim before the learned Judicial Magistrate who has to decide such dispute, if any, after hearing the concerned parties in accordance with law.

7. In such circumstances, the petitioner, if so advised, is at liberty to file an application before the respondent no.2, who will decide the release of such belongings after hearing all the concerned parties in accordance with law. Considering the view we have taken in the above petition, we find that the communication dated 4/04/2017 will not come in the way of the respondent no.2 in considering the claim of the petitioner in accordance with law. In case any such application is filed the respondent no.2 shall decide such application as expeditiously as possible. Rule stands disposed off accordingly.

NUTAN D. SARDESSAI, J.

F.M.REIS, J.

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