IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3248 OF 2017

M/s. J. Marks Exim (India) Pvt. Ltd. .. Petitioner
Vs
Punjab National Bank. .. Respondent

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Shri Navaneetha Krishnan T for the Petitioner.
Shri Prakash Shinde i/b MDP & Partners for the Respondent.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 17TH MARCH 2017

P.C.

1. This Petition was ordered to be listed on board as the Regular Bench presided over by the Hon'ble Shri Justice R.M. Borde is not available in this week. As per the general administrative order of the Hon'ble the Chief Justice, the Petition is listed before this Court.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 19th January 2017 passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “the said Act of 2002”). Another challenge is to the subsequent order passed by the learned Chief Metropolitan Magistrate dated 14th March 2017 by which the Application for stay of the execution of the order dated 19th

January 2017 has been rejected. There are two contentions raised by the learned counsel appearing for the Petitioner. The first contention is that in view of the applicability of the of Section 26-D of the said Act of 2002, the secured creditor cannot exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry. The second contention is that for executing an order under Sub-section (1) of Section 14 of the said Act of 2002, appointment of an Advocate as the Court Commissioner ought not to have been made. His submission is that the said Advocate is not an empanelled Advocate.

3. As far as the first contention is concerned, the learned counsel appearing for the first Respondent has tendered across the bar the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (for short “the Act No.44 of 2016”) by which Chapter IVA was incorporated in the said Act of 2002 which includes Section 26D. Sub-section (2) of Section 1 of the said Act No.44 of 2016 clearly provides that the said Act No.44 of 2016 shall come into force on such date as the Central Government may appoint by a notification in the official gazette. The submission of the learned counsel appearing for the first Respondent is that no such notification in the official gazette has been issued appointing a date for bringing into force Section 26D, though by notifications issued from

time to time, certain other Sections have been brought into force. The learned counsel appearing for the Petitioner is unable to point out any such notification under Sub-section (2) of Section 1 of the said Act No.44 of 2016. However, he relies upon the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011 and submits that the fact that the Central Registry is already brought into existence shows that Section 26D has come into operation.

4. Unless a notification under Sub-section (2) of Section 1 of the said Act No.44 of 2016 is issued, we cannot accept the contention that Section 26D of the said Act of 2002 has come into force. As far as the second contention is concerned, we see no prejudice to the Petitioner if a member of the Bar is appointed as the Court Commissioner to take possession of the secured assets.

5. We see no merit in the Petition and the Petition is rejected.

(SMT.ANUJA PRABHUDESSAI, J) (A.S. OKA, J)