

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5684 OF 2017

Jitenderpal Singh Chadha

...Petitioner

*Versus*

The State of Maharashtra & Anr.

...Respondents

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Mr. Ghanshyam Upadhyay, i/by Law Juris, for the Petitioner.

Mr. B.V. Samant, AGP, for the Respondent No. 1.

Mr. O.A. Das, for Respondent No. 2.

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CORAM : B.R. GAVAI AND  
RIYAZ I. CHAGLA, JJ.

DATE : 10 July 2017

**ORDER :**

1. The Petitioner has filed the present Petition seeking directions from this Court, directing Respondent No. 2 to act upon the One Time Settlement (OTS) proposal/offer given by

*Sharayu.*

the Petitioner/his Company viz. Tornado Motors Pvt.Ltd. vide communication dated 29 May 2015 and is seeking setting aside of the order dated 9 March 2017 passed by the learned Chief Metropolitan Magistrate at Esplanade, Mumbai.

2. The Petitioner had availed certain credit facilities from Respondent No. 2 in respect of his Company viz. Tornado Motors Pvt.Ltd. Respondent No. 2 had instituted proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as “**SARFAESI Act**” in short) for recovery of the amounts due to Respondent No. 2 by the Petitioner's company. The Petitioner had submitted an OTS to Respondent No. 2. It is the Petitioner's case that Respondent No. 2 had assured the Petitioner that the Petitioner's request with regard to OTS was under consideration. However, Respondent No. 2 took recourse to Section 14 of the SARFAESI Act for possession of the subject property and obtained order dated 9 March 2017, which is impugned herein.

3. Shri. O.A. Das, the learned Counsel for Respondent No. 2, at the outset pointed out that the Petitioner had filed a Suit in the City Civil Court against Respondent No. 2 and the Chairman and Managing Director of Respondent No. 2 as well as the Volkswagen Group Sales India Private Limited for a declaration that no amounts are due from the Petitioner to Respondent No. 2 and the Volkswagen Group Sales India Private Limited and a mandatory injunction preventing them from interfering with the Petitioner's possession of the subject property. The said Suit was dismissed by an order of the City Civil Court dated 22 October 2016.

4. Shri. Upadhyay, the learned Counsel for the Petitioner, was called upon to disclose where this fact was mentioned in the Petition. Shri. Upadhyay referred to paragraph 3 of the Petition. Upon a perusal of paragraph 3 of the Petition, it is only mentioned that the Suit had been filed in the City Civil Court seeking various reliefs including relief of negative declaration and a copy of the Plaint is annexed to the present

Petition. The Petitioner has alleged in paragraph 3 that Respondent No. 2 had acted contrary to the conditions/rules/regulations and procedure while releasing the bank guarantee, which had been availed of by the Petitioner/Company in favour of Volkswagen Group Sales India Private Limited and that Respondent No. 2 by so doing had committed fraud and that the Plaint filed be treated as part and parcel of the present Petition. There was no mention of the Suit having been dismissed. Shri. Upadhyay now contends that the City Civil Court by order dated 22 October 2016 had only dismissed the Suit for default.

5. We are of the considered view that the Petitioner has suppressed material facts in the Petition viz. the order dated 22 October 2016 passed by the City Civil Court, Mumbai, dismissing the Suit filed by the Petitioner. We are of the view that the Petitioner by suppressing this material fact in the Petition has not come to the Court with clean hands and is undeserving of any relief sought in the Petition.

6. We accordingly, dismiss the Petition.
7. There shall be no order as to costs.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]