

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2337 OF 2017

Bank of India

....Petitioner

V/s.

M/s. Reefer India and Ors.

....Respondents

* * * * *

Mr. O.A. Das, Advocate for the petitioner.

Mrs. M.H. Mhatre, APP for the respondent, State.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

24TH AUGUST, 2017.

P.C. :-

1. The above writ petition has been filed by the petitioner, Bank of India seeking a direction against the respondent no.5 i.e. Kharghar Police Station to act on the complaint of the petitioner and take back the physical possession of the property from the respondents no.2 and 3 and to handover possession to the petitioner and to take

necessary action against respondents no.2 to 4 for their illegal action.

2. The petitioner is a secured creditor as the property in question is concerned was mortgaged to it. The petitioner had approached the District Magistrate, Raigad by filing an application under Section 14(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) to take possession of the secured asset i.e. the property in question, being Flat No. 1401, 14th floor, Saipras Aqa, Adhiraj Garden, 'B' wing, Plot No.32, Sector-5, Kharghar, Navi Mumbai. The said application filed by the petitioner came to be allowed by the District Magistrate, Raigad by her order dated 16th February, 2016 which is annexed to the above writ petition as Exhibit-I. By the said order, the District Magistrate has ordered to take possession of the secured asset as above and handover possession of the secured asset to the secured creditor i.e. the petitioner bank who was the applicant in the said application. Pursuant to the said

order, possession of the said secured asset was taken and possession was handed over on 12th July, 2016 to the petitioner after following the procedure. It is the case of the petitioner that, on the very next day i.e. 13th July, 2016, the petitioner bank was informed that the respondent no.3 broke open the door of the Flat i.e. the property in question and has taken forcible possession of the secured property. It is the further case of the petitioner that, the petitioner immediately filed a police complaint with the Kharghar Police Station on 13th July, 2016. However, no cognizance of the same was taken. The petitioner therefore seeks the relief which has been adverted to in the earlier part of the instant order. Having heard the Learned Counsel for the petitioner, it is not possible for this Court to grant the relief of the nature sought which is adverted to hereinabove. Since, it is the case of the petitioner that, the respondent no.2 has forcibly taken back the possession after the same was handed over to the petitioner by the District Magistrate, Raigad, it is for the petitioner to file an application under

Section 14 of the SARFAESI Act pointing out the aforesaid facts and seeking relief on the said basis. If such application is made by the petitioner, the District Magistrate, Raigad is directed to hear and decide the same expeditiously and latest within four weeks of the receipt of the said application. This is in view of the fact that, it is the allegation of the petitioner that, the borrower has taken back forcible possession of the secured asset after the possession of the same was handed over to the petitioner. We do not express any opinion as regards the aforesaid case of the petitioner and it is for the District Magistrate to adjudicate upon the same and pass appropriate orders in accordance with law. If the application is filed within one week, then the same be decided within 4 weeks thereafter in terms of the directions contained in the instant order. With the aforesaid observations, the writ petition is disposed of.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)