

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION (L) NO.419 OF 2017
IN
COMMERCIAL SUIT NO.106 OF 2015**

Dinesh Jaiswal ... Applicant

In the matter between :

Tata Capital Housing Finance Ltd. ... Plaintiff

Versus

Dinesh G. Jaiswal And Another ... Defendants

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Mr. Shailesh Shah, Senior Advocate a/w Ms. Kotwal i/b MDP & Partners for the Plaintiff.

Mr. A.P. Steenson i/b APS Law Associates for the Defendants.

Mr. Mandavgade, OSD from Office of Court Receiver present.

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CORAM : S.C.GUPTE, J.

DATE : 19 JULY 2017

P.C. :

. This Notice of Motion is taken out by the Defendants in a Suit for a money decree. It is the grievance of the Defendants that by a consent order passed on a Notice of Motion in the Suit, a Court Receiver has been appointed and the Defendants are allowed to act as agents of the court receiver on payment of royalty. It is the case of the Defendants that they have been paying such royalty and are in occupation of the suit property as such agents and that whilst they continue to be in such occupation, the Plaintiff has resorted to the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the

SARFAESI Act”) and is about to take steps under Section 13(2) of that Act. The motion seeks a temporary injunction restraining the Plaintiff from taking steps under the SARFAESI Act without leave of the Court.

2 Whereas there is no difficulty in issuing any notice under Section 13(2) of the SARFAESI Act, as and when the Plaintiff seeks symbolic possession of the suit property under Section 13(4) of that Act, it will have to approach this Court for leave of the Court to do so, since the suit property is already *custodia legis* in the hands of the court receiver appointed by this Court.

3 With this clarification, no further order needs to be considered. The Notice of Motion is disposed of accordingly. No order as to costs.

(S.C. GUPTE, J.)