

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.396 OF 2018

Surendra Lubricants

... Petitioner

Versus

The Goa State Cooperative Bank Ltd.

.... Respondent

Mr. Vivek Angelo Rodrigues, Advocate for the Petitioner.

Mr. S.R. Rivankar, Additional Government Advocate for Respondent Nos.1 & 2.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 11 October 2018.

P.C. :

By this petition, the Petitioner has sought the following reliefs:

“a. Issue a Writ of Mandamus or in nature of Mandamus directing the Respondent or a writ in nature of the Certiorari quashing and setting aside Notice of Possession issued under S.13(4) SARFAESI Act published in the newspaper on 4 March 2017 along with the Notice that was received by the Petitioner on 7 March 2018 dated 28 February 2017.

b. Pending hearing and final disposal of the present Petition to an appropriate Order staying effect of the impugned Notice of possession issued under S.13(4) SARFAESI Act published in the newspaper on 4 March 2017 along with the Notice that was received by the Petitioner on 7 March 2018 dated 28 February 2017.”

2. A preliminary objection is taken by the Respondent-Bank in respect of the existence of an alternate statutory remedy under the SARFAESI Act. The Petitioner has availed of Cash Credit Facility of Rs.10,00,000/- disbursed on 26 September 2000. The Petitioner has mortgaged two plots as per the terms and conditions of the sanction letter. When the Respondent-Bank sought to take possession of the plots some time in the year 2018, the Petitioner has filed this Petition, inter alia contending that the action of the Respondent-Bank is barred by time. The Respondent-Bank has contended that proceedings are not barred by time since the proceedings were pending and even this ground can be urged in the Appeal.

3. The Petitioner had shown willingness to pay the principal amount and contended that during the period when the proceedings were pending, the interest be waived as a part of settlement. When the Petition came up on Board on 28 March 2018, notice was issued. The learned counsel appeared for the Bank on 3rd April 2018.

Thereafter the matter has been adjourned on 4 April 2018, 18 April 2018, 25 April 2018 and Summer Vacation on 6 June 2018, 25 June 2018, 16 July 2018, 24 July 2018, 30 July 2018, 6 August 2018, 21 August 2018 and 24 September 2018. The Petitioner has deposited an amount of Rs.Five lakhs, without prejudice to facilitate the settlement talks. The Petitioner had also met the office bearers of the Respondent-bank, however, the settlement could not be arrived at.

4. Having considered these reliefs sought for by the Petitioner and the existence of an alternate statutory remedy, we are not inclined to entertain this Writ Petition, as the Petitioner can approach the Tribunal with necessary application/Appeal. Needless to state that it is open to the Petitioner to pursue his proceedings as per law before the appropriate forum.

5. The learned counsel for the Petitioner submitted that the Petitioner proceedings may be time barred and the Petitioner may not get any relief on that count from the Tribunal. In such a case, the Petitioner can always contends to take benefit of Section 14 of the Limitation Act, that the Petition was pending in this Court and was adjourned from time to time to find out whether settlement could be reached. The Tribunal will, no doubt, keep in mind the pendency of this Petition, when he decides the application of the Petitioner for

condonation.

6. The learned counsel for the Petitioner submitted that the protection be given to the Petitioner, otherwise the alternate remedy would be rendered meaningless if the Respondent to proceed to take possession of the mortgaged property.

7. Considering the facts and circumstances, we are inclined to continue the position as on date for a period of two months from today. The Tribunal may consider taking up the application for condonation of delay and the application for stay at the earliest considering the facts and circumstances of the case and that, in fact, the genuine attempts were made to settle the dispute which unfortunately did not fructify.

8. The amount deposited by the Petitioner with the Respondent-Bank during the pendency of the Petition will be remained deposited to the bank, subject to the outcome of the proceedings before the Tribunal.

9. We make it clear that we have not commented on the merits of the rival contentions as they will be decided by the Tribunal and the above observations are in the context of the condonation of

delay and that it could be decided at the earliest.

10. With these observations, the Writ Petition is disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.