

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 451 OF 2016

Santosh Rajaram Tendulkar

....Petitioner

V/s.

Collector and District Magistrate,
Kolhapur and Ors.

....Respondents

Mr. S.S. Patwardhan, Advocate for the petitioner.

Mr. A.P. Vanarase, AGP for respondent no.1.

Mr. Umesh R. Mankapure, Advocate for respondents
no.2 and 3.

Mr. Sushil Appasaheb Inamdar, Advocate for
respondent no.4.

Coram : K.K. Tated, &

Sandeep K. Shinde, JJ.

Wednesday, 10th October, 2018.

P.C. :

1. Heard Learned Counsel for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner is seeking direction against the respondent-Bank to handover vacant and peaceful possession of the suit property i.e. Shop No.15, admeasuring 18.16 sq.mts situated on the ground floor of the building known as “Parag Complex, C.S. No. 596/1, E-Ward, Shahupuri-Kolhapur pursuant to the order dated 13th December, 2011 passed by respondent no.1 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI Act” for short) and also to issue sales certificate/to execute sales deed in favour of the petitioner.

3. In the present proceedings, the respondent-Bank issued notice under Section 13(2) of the SARFAESI Act to the respondent no.4 after following

due process of law.

4. As the respondent no.4 failed and neglected to repay the entire loan, the respondent-Bank conducted auction on 11th October, 2010 in respect of the suit property. In that auction, the petitioner purchased the said property. After payment of entire amount, the petitioner requested the respondent-Bank to handover vacant and peaceful possession and also to issue sales certificate and/or to execute the sales deed in his favour.

5. During the pendency of the present Writ Petition, this Court by order dated 3rd May, 2018 (Coram : Hon'ble A.A. Sayed & Hon'ble Ravindra Ghuge, JJ) directed the State to take forcible possession of the suit property from respondent no.4 and handover the respondent-Bank so that they can put the auction purchaser i.e. the petitioner in the suit property. That

order was complied by the respondents.

4. During the course of arguments, Mr. Patwardhan, the Learned Counsel appearing on behalf of the petitioner submits that, in view of the subsequent developments as per order dated 3rd May, 2018 now, he is not pressing prayer clause (a) of the present petition.

5. The Learned Counsel for the petitioner, submits that, though the petitioner purchased the suit property in auction sale in 2010, till today, the respondent-Bank failed and neglected to issue sales certificate and/or to execute the sales deed in his favour. He submits that, in view of the subsequent developments, the respondent-Bank be directed to execute the sales certificate and/or to execute the sales-deed with immediate effect in favour of the petitioner.

6. The Learned Counsel appearing on behalf of

respondent no.2-Bank submits that, they have no objection to issue sales certificate and/or to execute sales deed if this Court directed them to do so.

7. The Learned Counsel appearing on behalf of respondent no.4 filed Affidavit dated 9th October, 2018. The same is taken on record.

5. The Advocate for respondent no.4 submits that, respondent no.4 is ready and willing to repay the entire loan amount to the respondent-Bank alongwith interest, penal interest and costs, if any. He submits that, time and again, they called upon the respondent-Bank to submit Statement of Accounts so that they could clear the entire dues. Till today, they have not received the said statement. Hence, there is no question of directing respondent no.2 to issue sales certificate and/or to execute the sales deed in favour of the petitioner in respect of the suit property.

6. We have heard both sides at length. It is to be noted that, the petitioner purchased the suit property in auction sale in 2010 and paid the entire amount to the respondent no.2. In spite of that, respondent no.2 failed and neglected to handover vacant and peaceful possession and to issue sales certificate in favour of the petitioner. Hence, the petitioner filed the present petition. During the pendency of the present writ petition, the respondent-Bank as per order dated 3rd May, 2018 passed by this Court, handed over vacant and peaceful possession to the petitioner. The question remained about issuing of sales certificate and/or to execute sales-deed in favour of the petitioner.

6. Though, the Learned Counsel appearing on behalf of respondent no.4 filed affidavit-in-reply dated 9th October, 2018 and have shown their readiness and willingness to repay the entire amount to the

respondent-Bank, his request cannot be considered at this stage. It is to be noted that, respondent no.4, initially filed Securitisation Application No. 128 of 2011 before the Learned Presiding Officer, DRT, Pune challenging the auction of the secured assets by the respondent-Bank. That Securitisation Application was rejected by the Presiding Officer, DRT by order dated 20th May, 2013.

7. Considering the fact, that the petitioner purchased this property in 2010 and waited for possession, as well as, for sales certificate, we are of the opinion that, in the interest of justice, it is necessary to direct the respondents no.2 and 3 to issue sales certificate and execute sales-deed in favour of the petitioner within the stipulated time.

8. Hence, the following order :

(a) *Respondents no.2 and 3 are directed to issue sales certificate and execute sales-deed in favour of the petitioner in respect of Shop No.15, admeasuring 18.16 sq.mts situated on the ground floor of the building known as "Parag Complex, C.S. No. 596/1, E-Ward, Shahupuri-Kolhapur within 15 days from today and register the same on payment of stamp duty and other expenses by the petitioner.*

(b) *No order as to costs.*

(SANDEEP K. SHINDE, J)

(K.K. TATED, J)