

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1078 OF 2018

Pujit Ravikiran Aggarwal

..Petitioner.

V/s.

State of Maharashtra & Anr.

..Respondents.

Mr.Bhavesh Parmar i/b. Mr.Vijay Prakash Yadav for the petitioner.

Mrs.N.S.Jain, APP for respondent No.1-State.

Mr.Shakib Dhariwala for respondent No.2.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 6, 2018

PC.:-

Heard the respective parties.

2. The petitioner-borrower pursuant to the provisions of sections 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002 ('SARFAESI Act' for short) suffered two impugned orders, one whereby the learned Metropolitan Magistrate appointed Court Commissioner to take possession of the secured assets and if required to take steps and use force, including break open the lock

or in case of any hurdle, take assistance of the police, if required.

The said order came to be passed on June 21, 2017 in case No.77/SA/2017.

3. The financial institution moved an application Exhibit-4 for appointment of Court Commissioner which was allowed by an order dated January 25, 2017 i.e. earlier to the aforesaid order. Both these orders are questioned in this writ petition.

4. A preliminary objection is raised by the learned counsel for respondent No.2 that the present petition is not maintainable, as an alternate remedy is available to the petitioner pursuant to the provisions of section 17(1) of the SARFAESI Act.

5. In spite of plea of availability of alternate remedy to the petitioner, the learned counsel for the petitioner submits that this Court required to adjudicate the dispute in its extra-ordinary jurisdiction.

6. The learned counsel for the petitioner submits that

pursuant to an application filed under section 13 of the SARFAESI Act without recording verification, a lawyer is appointed pursuant to the provisions of section 14 of the SARFAESI Act as a Court Commissioner. According to him, a lawyer ought not to have been appointed as a Court Commissioner when the scheme of the SAEFARSI Act does not permit it. In addition, a suggestion is made that structural changes are sought to be made by the Court Commissioner without the orders of the Metropolitan Magistrate and without permission of the Planning Authority i.e. the Bombay Municipal Corporation. He would urge that if tomorrow the Planning Authority notices illegal construction, he might be exposed to prosecution under the B.M.C. Act. He would submit that, if necessary, only upon permission from the Planning Authority, the possession of secured assets shall be taken, if necessary. He submits that the impugned orders, as such are not sustainable and contrary to the provisions of sections 13 and 14 of the SARFAESI Act.

7. *Per contra*, the learned counsel for the respondent-bank would urge that both the orders which are impugned are

questioned before this Court at a belated stage.

8. According to him, the secured assets are sought to be taken possession of pursuant to the provisions of section 13 of the SARFAESI Act in view of the default made by the present petition in repayment of loan. He submits that all necessary requirement under the statute were followed and the provisions of section 13 are invoked. He submits that there is no substance in the application and the application is liable to be rejected.

9. Considered rival submissions.

10. At this stage it is required to be noted that the first impugned order which is questioned in the petition was passed almost a year back. The first order is dated January 25, 2017 i.e. more than one year whereas the other order was passed on June 21, 2017. It is only at the fag end when the orders were executed, the petitioner has rushed to this Court by filing the writ petition on February 28, 2018 without disclosing any convincing reasons for such delay.

11. Apart from above, what is required to be noticed is, so

as to secure the assets, powers are vested under the statute with the Chief Metropolitan Magistrate to order appointment of Court Commissioner. The statute also permits all necessary steps to be taken to secure the possession of the secured assets. There is no statutory embargo on the right of the financial institutions seeking appointment of a lawyer as Court Commissioner. That being so, I hardly notice any illegality in the orders passed by the learned Magistrate in appointment of Court Commissioner.

12. So far as the issue of carrying out construction of walls so as to secure the assets is concerned, it is to be noted that the petitioner has already brought on record the said fact that such walls cannot be constructed without the permission of the Planning Authority. The financial institutions in such a situation will be at liberty take such steps so as to bring the fact to the notice of the Court Commissioner while executing the order of the learned Magistrate to secure the assets. The assets are secured pursuant to the orders of the Court and exigencies in which such orders are required to be passed so as to secure the assets pursuant to the object of the statute are also required to be appreciated at

this stage.

13. Keeping such issues *qua* the permission to be obtained from the authorities for construction of such walls open, I hardly notice any cause which warrants interference in the extra-ordinary jurisdiction. The petition fails and is dismissed.

(NITIN W.SAMBRE, J.)