IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION ST. NO. 23322 OF 2018

Sau Savita Satish Jagtap ..Petitioner
Vs.
The Additional District, Magistrate
(Home Branch), Pune & Ors ..Respondents

Mr. Vikram N. Walawalkar i/b Mr. D. R. Patekar for the Petitioner
Mr. Manoj Kumar a/w Ms Priya Shah for the Respondent No.3
Mr. N. C. Walimbe AGP for the Respondent State

CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 16th AUGUST, 2018

P.C.

1 Not on board. Taken up for admission in view of the urgency mentioned in the preacipe dated 16-8-2018.

2 The order dated 14-6-2018 passed by the Additional District Magistrate, (Home Branch) Pune under Section 14 of the SARFESI Act, is taken exception to by way of the above Petition.

3 The possession is sought to be taken as the Respondent Nos.4 and 5 who are the borrowers have defaulted in making payments as a result of which the Respondent No.3 which is an asset company who has been assigned the debt by the Citi Bank has initiated the process of taking possession of the secured asset. It appears that an affidavit came to be filed by the Respondent

No.3 before the Additional District Magistrate, Pune, that the Respondent Nos.4 and 5 are in possession of the property in question. However, the record of the above Writ Petition discloses that a Suit is pending between the Respondent No.4 and the Petitioner herein being Special Civil Suit No.1197 of 2016 which has been filed by the Petitioner for cancellation of the Sale Deed allegedly executed by the Petitioner in favour of the Respondent No.4 and for an injunction. In the said Suit a Written Statement came to be filed by the Respondent No.4 as a Defendant and in the said Written Statement it has been averred that inspite of repeated request made the Petitioner who is the Plaintiff is not handing over possession of the property in question to the Defendant i.e. the Respondent No.4 herein.

4 Be that as it may, since the remedy if any, available to the Petitioner is to approach the Debt Recovery Tribunal (DRT) Pune, it is not necessary for us to entertain the above Petition. Prima facie we find that there is a dispute in respect of the factum of possession in respect of the property in question. The Petitioner is required to be given an opportunity to assert its case before the DRT. We are therefore of the view that though notice of the Tahsildar issued pursuant to the order passed by the Additional District Magistrate, Pune, states that the possession would be taken on 20-8-2018 at 11.00 a.m., the interest of justice would be served if the following directions are issued:

(i) The taking over possession of the property in question in terms of the notice issued by the Tahsildar would stand postponed to 27-8-2018 at 11.00 a.m.

(ii) In the interregnum the Petitioner may approach the DRT Pune by way of filing an appropriate application and seeking appropriate reliefs before the DRT Pune. If any such application is filed, the same to be decided on its own merits and in accordance with law.

(iii) The contentions of the parties are kept open for being urged before the DRT, Pune.

(iv) The DRT would be well advised to decide the said application prior to 27-8-2018 and would also be within its right to extend the taking over of possession to another date if it so deems it appropriate.

5 In the light of the directions as aforesaid, it is not necessary to keep the above Writ Petition pending, the same to accordingly stand disposed of.

6 All parties to act upon an ordinary copy of this order duly authenticated by the Court Associate / Shirestedar.

Meera Mahesh Jadhav
Digitally signed by Meera Mahesh Jadhav
Date: 2018.08.16 14:50:54 +0530

[REVATI MOHITE DERE, J] **[R.M.SAVANT, J]**