

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 23642 OF 2018**

Mr. Abdul Rehman Abdul Bashir Shaikh **..Petitioner**

Vs.

Additional Commissioner, Pune Division, Pune & Ors
..Respondents

Mr. Sagar P Batavia for the Petitioner

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

IN CHAMBER AT 10.45 A.M.

P.C.

1 Not on board. Taken up in Chamber in view of the urgency mentioned in the precipe dated 16-8-2018.

2 The notice dated 17-7-2018 issued by the Tahsildar and Taluka Executive Magistrate Pune City, informing the Petitioner that the possession of the secured asset would be taken today i.e. 16-8-2018 at 11.00 a.m., as also the order dated 14-8-2018 passed by the Additional Commissioner, Pune Division, Pune, is taken exception to by way of the above Petition.

3 In so far as the order passed by the Additional Commissioner, Pune Division, Pune is concerned, he has refused to entertain the Appeal on the ground that against the notice dated 17-7-2018 an Appeal would lie before the Debt Recovery Appellate Tribunal (DRAT) in terms of Section 18 of the SARFESI Act. No fault can be found with the said reasoning of the Additional Commissioner, Pune Division, Pune, having regard to the scheme as encompassed in the SARFESI Act.

4 In so far as the notice is concerned, it has been issued as long as on 17-7-2018. It is the case of the Learned Counsel for the Petitioner that the Petitioner was wrongly pursuing the remedy before the Additional Commissioner, Pune Division, Pune, instead of filing an Appeal before the DRAT. It is not necessary for us to go into the said contention of the Petitioner. Since the remedy of the Petitioner is to file an Appeal before the DRAT, we deem it appropriate to relegate the Petitioner to the said remedy having regard to the fact that the Petitioner is a borrower who has defaulted in payment resulting in measures being taken under Section 13(4) of the SARFESI Act. It would be before the DRAT that the Petitioner would have to seek appropriate reliefs. We express no opinion in that regard. If the DRAT is moved either today or in the coming week by the Petitioner by way of an Appeal, the DRAT may consider any application filed by the Petitioner in

the said Appeal on its own merits in accordance with law and expeditiously.

5 With the directions as aforesaid the Writ Petition is disposed of.

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

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

Meera
Mahesh
Jadhav
Digitally
signed by
Meera
Mahesh
Jadhav
Date:
2018.08.16
12:26:38
+0530