

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 3679 OF 2016

Jayaraman Sivashankar

.. Petitioner

Vs.

The SVC Co-op. Bank Ltd. & Anr. .. Respondents

Mr. Nagendra S. Dube for the Petitioner.

Mr. Ashish Kamat a/w. Mr. Nikhil Rajani i/b M/s. V. Deshpande & Co.
for the Respondent No.1.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 5th NOVEMBER, 2019.

P. C. :

1. Request made by learned Counsel for the Petitioner to defer the hearing is declined.
2. The reason to decline the request is that challenge in the Writ Petition is to an order dated 07.11.2015 passed by the District Magistrate, Thane allowing an application filed by the Respondent-bank and appointing the Tahasildar, Thane to take possession of the secured assets being Flat No.1004, 10th Floor, T-3, Saket Complex, New Bombay-Poona Highway, Thane. The Petitioner has questioned the adjudication and the claim by the bank in proceeding under Section 13 of the SARFAESI Act by filing S.A. No. 2 of 2016 before the Debt Recovery Tribunal, a right of the Petitioner under Section 17 of the SARFAESI Act. On 02.05.2018 a Division Bench of this Court noted the law declared by the Supreme Court in the decision reported as

(2010) 8 SCC 110 United Bank of India Vs. Satyawati Tondon & Ors.

which holds that a party aggrieved by adjudication under Section 13 and an order passed under Section 14 of the SARFAESI Act, 2002 has a remedy before the Debt Recovery Tribunal. The order also notes S.A. No. 2 of 2016 filed by the Petitioner and holds that keeping open the issue of maintainability of the Petition, for the Petitioners to show bonafides, they would deposit Rs.1.5 Crores with the bank.

3. The said order was challenged by the Petitioner before the Supreme Court in SLP (Civil) No. 12727/2018 in which notice was issued and it was directed that the Petitioner would deposit Rs.50,00,000/-. The SLP was disposed of on 18.05.2018. The Petitioner did not deposit the sum of Rs.50,00,000/- and their request of extension of time has been declined by the Supreme Court by order dated 08.03.2019. Till date, compliance neither with the order passed by this Court nor the order passed by the Supreme Court has been made.

4. Proceedings under Article 226 of the Constitution are discretionary proceedings before this Court.

5. In view of the fact that the Petitioner has already invoked the statutory remedy of appeal before the Debt Recovery Tribunal and for the additional reason of the Petitioner not complying with the interim order passed by this Court as modified by the Supreme Court, we dismiss the Petition, relegating the Petitioner to the remedy which the Petitioner has already availed before the Debt Recovery Tribunal.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

Digitally signed
by Arjun M.
Kadam
Date: 2019.11.06
10:55:37 +0530