

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.2287 OF 2019

Punjab National Bank	...	...Petitioner
v/s.		
Shri Aditya R.Dubey & ors.		...Respondents
...		
Mr.Sandeep Kumar Singh for the Petitioner.		

CORAM : **A.A. SAYED &**
RIYAZ IQBAL CHAGLA, JJ.

DATED : 1 MARCH 2019

P.C.:

In the nature of order that we propose to pass, it is not necessary to issue notice to the Respondents.

2. The Writ Petition is filed seeking following reliefs:

“(a) To issue writ of certiorari and any other appropriate writ, order or direction declaring that since the order of the status quo and extension of same on every date in the RCS No.976 of 2015 by the Hon'ble Civil Judge Senior Division, Bhiwandi, Thane has been obtained on the fraudulent and collusion basis and that too without the jurisdiction of the Civil Court suppressing the material facts, liable to be quash/set aside/vacated in the interest of justice.”

3. The Petitioner-Bank has taken symbolic possession of the secured asset viz. Survey No.221, Phase-1, Oswal Industrial Complex, Unit No.9 & 10 at Village Sonale, Near Sonale Police Station, Bhiwandi, Thane, under section 13(4) of the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and an order under section 14 of the SARFAESI Act has also been passed by the District Magistrate, Thane, as far back as on 08-09-2015. The grievance of the Petitioner-Bank is that despite the said order dated 08-09-2015 under section 14 of the SARFAESI Act, the Petitioner-Bank has not been able to take physical possession of the secured asset.

4. Learned Counsel for the Petitioner-Bank submitted that the Respondent No.1 is falsely claiming to be a tenant of the secured asset and in collusion with the borrowers/mortgagors has filed a suit being RC Suit No.976 of 2015 before the Civil Judge, Senior Division at Bhiwandi, Thane, though the Civil Court has no jurisdiction and the learned Civil Judge has passed an exparte order granting status-quo, which has been extended from time to time. It is submitted that the Petitioner-Bank has already made an Application for impleadment as a party-Defendant No.2, which is pending. It is the grievance of the Petitioner-Bank that though measures under SARFAESI Act have been taken, in view of the status-quo order, the entire recovery of dues of the Petitioner-Bank has been held up despite the

fact that the Civil Court has no jurisdiction. Learned Counsel for the Petitioner-Bank has pointed out provisions of section 17(4-A) of the SARFAESI Act, whereunder the Respondent No.1 has a remedy before the D.R.T.

5. We find substance in the contention of the learned Counsel for the Petitioner-Bank. We find that though the Respondent No.1 has a remedy before the D.R.T. under the SARFAESI Act, the Civil Judge, Senior Division at Bhiwandi, Thane, has not only entertained the suit, but also granted status-quo order, which is running right from the year 2015. We are of the prima facie view that the entire object of the enactment i.e. SARFAESI Act is being defeated. In the circumstances, we pass the following order:

ORDER

The Civil Judge, Senior Division at Bhiwandi, Thane shall dispose of RC Suit No.976 of 2015 or atleast the Interim Applications within a period of two months from today without being influenced by this order.

6. The Petition is disposed of in the above terms.

(RIYAZ IQBAL CHAGLA,J.)

(A.A.SAYED, J.)