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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.325 OF 2019
IN
WRIT PETITION NO.10713 OF 2018**

Shashi Structural Engineers Pvt. Ltd.

... Applicant /
Petitioner

V/s.

Punjab National Bank & Ors.

... Respondents

Shri Pankaj Garg, with Shri Milind Garg, and Shri Dheeraj Jain for
the Applicant / Petitioner.

Mr. Pankaj Vijayan, with Swati Kakwani i/b Intralegal for
Respondent No.1.

**CORAM: A.A.SAYED &
RIYAZ I. CHAGLA, JJ.
DATE: 25TH FEBRUARY, 2019.**

PC:-

1. The Civil Application is taken out in the Writ Petition. The
Petitioner sought the following reliefs in the Writ Petition:-

***A) Quash all the illegal and ultra vires actions
taken by the Respondent No.1.***

***B) Direct the Respondent No.1 to proceed
further in accordance with the guidelines issued
by the Reserve Bank of India issued on
01.07.2015, 17.03.2016 & 12.02.2018.***

***C) Declare all the ultra vires actions taken by the
Respondent No.1 being violative of the Article
14, 19(1) (c) and 21 of the Constitution of India,
1950.***

***D) Award an appropriate Compensation to the
Petitioner by passing an order against the
Respondent No.1 for the violation of the
Fundamental Rights of the Petitioner.***

E) Pass any other order as this Hon'ble Court deems fit and proper in favour of the Petitioner.

2. The Writ Petition was admitted on 5th October, 2018 by the Division Bench (Coram : Tated and Shinde, JJ.). Pertinently, there are no prayers in the Petition seeking any interim reliefs despite the fact that measures under the SARFAESI Act including under Section 13(4) of taking symbolic possession of the secured assets have been taken by the Respondent – Bank. The Petitioner was very much aware that action under Section 14 of SARFAESI Act for taking physical possession and sale of the secured assets was in the pipeline. Notwithstanding the above, no prayers for interim reliefs were sought in the Writ Petition apparently by design to get that Writ Petition admitted on the larger issues raised, without having to approach the DRT.

3. By way of present Civil Application, the Petitioner is now seeking the following reliefs:-

a) Restrain the Respondent No.1 from taking any coercive action/s against the Petitioner/Applicant in light of the letters dated 09.10.2018, 16.11.2018, 17.01.2019 & 26.01.2019 or any other letter/s issued till the pendency of the Writ Petition No.10713 of 2018 titled as 'Shashi Structural Engineers Pvt. Ltd. Vs. Punjab National Bank & Ors.

b) And any other order as this Hon'ble Court deems fit and proper.

4. The auction sale of the secured assets in question is scheduled for tomorrow i.e. 26 February, 2019. It is pointed out by the learned Counsel for the Respondent Bank that none of secured assets belong to the Petitioner and the owners / mortgagors are not made parties to the Writ Petition / Civil Application. When we asked learned Counsel for the Petitioner whether the Petitioner is willing to deposit 50% of the outstanding dues, the response is evasive. Inasmuch as the Petitioner has an alternate remedy before the DRT, the Petitioner would be at liberty to approach the DRT to challenge the actions taken under the SARFAESI Act including the auction sale of the secured assets in accordance with law, if so advised. In the event the Petitioner files the Securitisation Application before DRT, the same shall be decided by DRT without being influenced by the admission and pendency of this Writ Petition.

5. The Civil Application is dismissed. For a period of two weeks from today the Respondent - Bank shall not finalise auction sale.

(RIYAZ I. CHAGLA J.)

(A.A.SAYED, J.)