

**.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9856 of 2018**

**WITH
CIVIL APPLICATION NO.121 OF 2019
IN
WRIT PETITION NO.9856 of 2018**

**WITH
CIVIL APPLICATION NO.973 OF 2019
IN
WRIT PETITION NO.9856 of 2018**

Dr.Mrs. Jayashri Pradeep Khinvasara .. Petitioner
Versus

The Authorized Officer Shri Laxmikrupa
Urban Co-operative Bank Limited,
Pune and others .. Respondents

...

Mr. Mathews Nedumpara with Raja G. Vatecha I/b Preeti
Dambre for the petitioner.

Mr.K.S. Thorat, AGP For respondent nos.3 and 4.

**CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.**

DATED : 25th NOVEMBER, 2019

P.C:-

1 Heard learned counsel for the petitioner.

Tilak

2 An illegal and perverse order passed by the learned Debt Recovery Tribunal which is dated 16th March 2018 has resulted in the present petition being filed and notwithstanding the prayers made in the Writ Petition, learned counsel for the petitioner urges that in view of the order passed by the learned DRT, this Court should declare that the remedy of the petitioner is to file a Civil Suit.

3 Relevant facts are that claiming that the loan account of the petitioner was in default, the second respondent issued a notice to the petitioner under Section 13(2) of the SARFAESI Act on 23rd December 2016. No order under sub-section 3A of Section 13 of the SARFAESI Act being passed, the bank proceeded to exercise power under sub-section (4) of Section 13 of the SARFAESI Act. The authorized officer of the Bank issued notice to the petitioner that symbolic possession of the secured asset, a shop had been taken over by him. The petitioner approached DRT under Section 17 of the SARFAESI Act and notwithstanding the law declared by the Supreme Court in the decision reported in Standard Chartered Bank Vs. V. Noble Kumar 2013(9) SCC 620, the Tribunal held that the application was not maintainable. Thus, the interesting argument advanced by learned counsel for the petitioner and as noted above.

4 Needless to state if an order or an action by a statutory authority affects a civil right of the noticee, the noticee would have a remedy either before a competent Court having jurisdiction or a statutory Tribunal constituted.

5 The view taken by the learned DRT is contrary to the law.

6 We allow the Writ Petition and quash the impugned order dated 16th March 2018 with a direction to learned DRT, Pune to decide petitioner's S.A.No. 96/2017 in accordance with law.

7 Civil Applications Not on Board. Mentioned.

8 In view of disposal of Writ Petition, Civil Application Nos.121/2019 and 973/2019 do not survive and are disposed of accordingly.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE