

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11524 OF 2019

Encore Asset Reconstruction Company Pvt. Ltd. ..Petitioner
Versus
M/s. Jaycee Services & Ors. ..Respondents

Ms. Naiana Agrawal i/by Vaish Associates, Advocate for the Petitioner.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 13th NOVEMBER, 2019

P.C.

1] The Petitioner is aggrieved by the order dated 8th March 2019 passed by the learned Additional District Magistrate, Thane which records that perusal of the application filed under Section 14 of the SARFAESI Act, 2002 by the Petitioner shows that Kalyan Janta Sahakari Bank Ltd. had advanced loan to the borrower by mortgage of the Sale Certificate. That the Sale Certificate is not a document of title and thus the mortgage by deposit of the Sale Certificate is illegal and invalid.

2] A perusal of the application filed by the Petitioner shows that the case of the Petitioner was that Kalyan Janta Sahakari Bank Ltd. had advanced the loan and the same was secured by a registered mortgage of two bungalows on Plot No.3 at Shreesh CHS Ltd., Thane

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and two shops being shop Nos.3 and 6 in Sindhuthirth CHS Ltd. and Garodia Apartment CHS Ltd. Thane. It was also pleaded that the membership certificate concerning the mortgage properties were deposited with the said Bank. It was pleaded that the Petitioner is the assignee from the Bank.

3] It is obvious that the learned Additional Magistrate has totally misconstrued the application filed under Section 14 of the SARFAESI Act before him. The application does not plea that the mortgage was created by deposit of the Share Certificates pertaining to the three immovable properties. The pleading is that it is a case of registered mortgage and that the Share Certificate pertaining to the three societies were handed over to the Kalyan Janta Sahakari Bank Ltd.

4] Thus, we dispose of the Petition quashing the impugned order dated 8th March 2019 and simultaneously direct the Additional District Magistrate Thane to pass orders on the application filed before him guided by the present order. Needful shall be done by the Additional District Magistrate within a week of receipt of the present order.

5] No costs.

Balaji G.
Panchal

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Balaji G. Panchal
Date: 2019.11.14
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE