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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO. 22612 OF 2019

Au Small Finance Bank Ltd. .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr. Sidharth Samantaray a/w Ms. Dimple Tejani i/by Sanjay Anabhawane for Petitioner.
Ms. Nisha Mehra, AGP for Respondent No.1 – State.
Mr. S. B. Deshmukh for Respondent No.2.
Mr. Pavan S. Patil for Respondent Nos.3 & 4.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

DECEMBER 11, 2019.

P.C.

1. Heard learned counsel for the parties.

2. Respondent No. 3 availed a credit from the Petitioner and Respondent Nos. 3 and 4, after taking permission from the Respondent No.2, created an equitable mortgage of its interest in Gala No.855 situated at the Chatrapati Shivaji Market Yard, Pune

on land bearing CTS No. 2930 belonging to the Respondent No.2. This was with the permission of the Respondent No.2 as per its letter dated 1st July, 2016. The letter of consent records that the no object granted is subject to the compliance of the ten terms and conditions stipulated in the letter. Condition Nos.7, 8 and 9 being relevant to be noted, read as under :-

> "*7. If the borrowers default in the loan repayment for some reason you shall intimate before you proceed with your legal actions to Bazar Samitee and you should not proceed without consultation to us. Without consent of Bazar Samitee you or at your instance any other agency can't attach the said property or you can't dispose of or transfer the said property.*
>
> *8. You are required to obtain the copy of registered Lease Deed/Rent Agreement from the Lessees/ Gala Holders and then only after verifying their repayment capacity should grant loan.*
>
> *9. The details of the sanctioned loan should be noted in our office register meant for the same and it shall be your responsibility to make the required entries to that effect prior to disbursement of loan and if you do not comply accordingly Bazar Samitee shall not be responsible."*

3. The consent terminates by recording that in the event

of breach of any condition, the no objection shall stand revoked.

4. The credit being in default, the Petitioner wrote a letter on 18th January, 2018 to the Respondent No.2 informing of the default and the intention of the Bank to proceed under SARFAESI Act, 2002.

5. The permission sought was served upon the Respondent No.2 on 22nd January, 2018. The Respondent No.2 did not respond.

6. The grievance of the Petitioner is to a letter dated 26th October, 2018 written by the Respondent No.2 informing that Condition Nos.7 and 9 being violated, the permission granted was revoked.

7. Suffice it to state, there is admittedly a default by Respondent No.3. Concededly the same was intimated to the Respondent No.2 on 18th January, 2018.

8. As regards violation of Condition Nos.9, suffice it to state that vide letter dated 18th January, 2018 it was informed to the Respondent No.2 that the Respondent No.3 had availed a

business loan of ₹ 39 lakhs. Further, it was informed to the Respondent No.2 before the loan was granted that it was proposed to grant loan in sum of ₹ 39 lakhs. Thus meaningfully read there is compliance with Condition No.9 as well.

9. We dispose of the writ petition quashing the communication dated 17th May, 2019.

10. At this stage we note a argument advanced by learned counsel for the Respondent No.2. The argument is that the Gala which was mortgaged i.e. physical structure belongs to Respondent No.2. The learned counsel posed the question : How can the structure be sold in execution enforcement of the security? The answer is simple. The leasehold / license right in favour of the Respondent Nos.3 and 4 is for a term of 30 years. The mortgage is a charge over the said right. Meaning thereby the auction purchaser would purchase the leasehold / license rights for the remainder duration of the lease/license period.

SMT. BHARATI DANGRE, J. **CHIEF JUSTICE**