

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.23153 OF 2019

Mehaboob Yakub Shaikh

Petitioner

versus

The Vishweshwar Sahakari Bank Ltd.
and others

Respondents

Ms.Navaneetha Krishnan T. for Petitioner.

Mr.Vishwanath Patil I/by Mr.Keal Ahya for Respondent no.2.

CORAM : A.A.SAYED AND
PRAKASH D. NAIK, JJ.

DATE : 19th August 2019

PC :

1. The Petitioner has challenged the order dated 23rd March 2017 passed by the District Magistrate u/s 14 of the SARFAESI Act and the subsequent notice dated 15th July 2019 for taking over physical possession of the secured asset.

2. Learned Counsel for Respondent no.2 informs us that the physical possession of the secured asset has already been taken today.

3. The Petitioner has an alternate remedy before the DRT as held by Supreme Court in (i) Kanaiyalal Lalchand Sachdev and others Vs. State of Maharashtra and others¹ and (ii) Standard Chartered Bank Vs. V.Noble Kumar and others².

1 (2011)2-SCC-782

2 (2013)9-SCC-620

4. In Kanaiyalal Lalchand Sachdev (supra), the Supreme Court has observed in paragraphs 7 and 23 as follows :

“7. In pursuance thereof, Respondent No.3 filed CC No.223/M/2008 before the Chief Metropolitan Magistrate under Section 14 of the act for taking possession of the secured assets. Vide order dated 3-2-2009, the Magistrate allowed the said application and directed the Assistant Registrar, Kurla Centre of Courts, to take possession of the mortgaged properties after issuing notice to the appellants. Vide notice dated 27-2-2009, the Assistant Registrar, directed the appellants to hand over the possession of the mortgaged properties to Respondent No.3 within 15 days from the receipt of the said notice.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Article 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh V National Insurance Co.Ltd; Surya Dev Rai V. Ram Chander Rai and SBI V. Allied Chemical Laboratories).”

In V.Noble Kumar (supra), the Supreme Court in paragraph No.27 held as follows :

“27. The ‘appeal’ under section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only

to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an 'appeal' under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtained of the possession of a secured asset is always a measure against which a remedy under section 17 is available."

5. The aforesaid judgments have not been considered in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others³, relied upon by the learned Counsel for the Petitioner. The said judgment holds the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India is not barred and that the High Court 'can' examine the decision of the Chief Metropolitan Magistrate or District Magistrate under Section 24 of the SARFAESI Act. Since there is a special Tribunal which is competent to examine challenges to all the measures taken under the SARFAESI Act, we are not inclined to entertain the Writ Petition.

6. The Writ Petition is dismissed with liberty to the Petitioner to approach the DRT.

(PRAKASH D. NAIK, J.)

(A.A.SAYED, J.)

MST