

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10860 OF 2019

GIS Housing Finance Limited	Petitioner
versus	
The State of Maharashtra	Respondent

Mr.Siddharth Samantray i/by Sanjay Anabhavane for Petitioner.
Mr.Y.D.Patil, AGP, for Respondents 1 to 4 State.

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

DATE : 15th October 2019

PC :

1. The Petition is filed seeking following relief :

“(b) That this Hon’ble Court be pleased to issue Writ of Mandamus or any other Writ as deem fit and proper by this Hon’ble Court and issue directions to the Respondent No.4 to expeditiously execute the Order dated 18.4.2017 passed u/s 14 of the SARFAESI Act and to take physical possession of the secured asset namely Flat No.402 on the 4th Floor in Ganesh Dham Apartment, Plot No.109, Near Yogi Hotel, Turbhe, Navi Mumbai, District Thane with directions to the concerned Police Station to grant police assistance for taking physical possession of the secured asset.”

2. In paragraph 13 of the Petition it is averred as follows :

“13. The Petitioner states that, however the said date was not materialized and the Respondent NO.4 refused to take possession of the secured asset on the ground that, there is some inter-se dispute between the Respondent No.5 and some third party and there is status-quo order passed in the said dispute. The Petitioner informed to the Respondent No.4 that, the Petitioner is neither party to the said litigation nor Order dated 18.4.2017 was stayed

by any Competent Court of law i.e. DRT, Mumbai and therefore the Petitioner is entitle to take possession of their mortgaged property however the Respondent No.4 refused to obey the request of the Petitioner.”

3. The order has been passed by the District Magistrate more than two and half years ago i.e. on 18th April 2017. However, the same has not been executed. The entire object of recovery of outstanding dues of the Banks and Financial Institutions would be defeated if such orders by the District Magistrate are not executed expeditiously. We make it clear that the order passed by the Civil Court in respect of inter-se dispute between the Respondent no.5 borrower and some third party, shall not come in the way of Respondent no.4 in executing the order of District Magistrate, particularly when the Petitioner was not a party to the said proceedings and such order would not bind the Petitioner.

4. In the circumstances we allow the Petition in terms of prayer clause (b). We direct the Respondent no.4 to execute the order dated 18th April 2017 on or before 15th November 2019.

5. The Petition to stand disposed of in above terms.

6. List the Petition under caption `direction' for reporting compliance, on 18th November 2019.

(PRAKASH D. NAIK, J.)

(A.A.SAYED, J.)