

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION (STAMP) NO. 29587 OF 2019

M/s. M.A. Enterprises & Anr. .. Petitioners
Vs.
The Bharat Co-operative Bank Ltd. .. Respondent

Ms. Barsha Parulekar a/w. Mr. Mahesh Vaswani, Ms. Shreya Tiwari and
Dharini Nagda for the Petitioners.
Mr. Rajesh Nagory i/b Ms. Sanjana Ghogare for the Respondent.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 25th NOVEMBER, 2019.**

P. C. :

1. The Petitioners are aggrieved by a notice dated 06.11.2019 issued by the Court Commissioner appointed vide order dated 24.04.2019 by the learned Chief Metropolitan Magistrate, Mumbai to take possession of Flat Nos.803 & 804 on the 12th Floor of Wing 'A', Building known as EE Heights at S. V. Road, Jogeshwari (W), Mumbai. The notice informed that the Court Commissioner would take possession of the flats today i.e. 25.11.2019 at 11.00 a.m.
2. We are informed that the Court Commissioner has not gone to the site to take physical possession of the above two flats.
3. It is apparent that authorization in favour of the Court Commissioner is under Section 14 of the SARFAESI Act, 2002.
4. In the Writ Petition it is admitted that as on 25.09.2018

outstanding amount in the loan account was ₹ 2,01,07,304/- and when on an earlier occasion the security was sought to be imposed, the Petitioners had filed an application under Section 17 of the SARFAESI Act before the learned DRT which had been dismissed. Thereafter the Petitioners claim to have deposited ₹ 35,00,000/-. This is disputed by the learned Counsel for the bank who states that only ₹ 20,82,000/- has been received.

5. Be that as it may, the Petitioners have an efficacious alternate remedy against the order passed by the learned Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act and thus we reject the Petition relegating the Petitioners to the statutory remedy.

6. At this stage learned Counsel for the Petitioners states that they are willing to settle the dues of the bank. Learned Counsel for the Bank states that the Petitioners would be welcome to pay the outstanding amount.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

Digitally signed
by Arjun M.
Kadam
Date:
2019.11.26
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