IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1511 OF 2019

Capt. Rakesh Kumar Pandey .. Petitioner

Vs

The Collector & District
Magistrate, Raigad & Ors. .. Respondents

…

Mr. Premkumar Pothina i/b Mr. Durgesh Gupta for the Petitioner.

Mr. Dawson Chirmarkar with Ms. Shweta Bansode i/b Mr. A.G. Pandit for Respondent Nos.2 to 4.

Ms. Shivani Soni i/b Deven Dwarkadas & Partners for Respondent Nos.5 and 6.

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

DATED : 25TH NOVEMBER, 2019.

P.C:-

1. The Writ Petition was filed, *inter alia*, on the plea that without complying with sub-section 3-A of Section 13 of SARFAESI Act, 2002, the Creditor has proceeded under Section 14 of the SARFAESI Act.

2. Without noting any other facts, relevant would it be to note

that on 08th January, 2018, Respondent No.2 (Creditor) issued a notice under Section 13(2) of the SARFAESI Act which was responded to, on 18th March, 2018 by the Petitioner. No order contemplated by sub-section 3-A of Section 13 of the SARFAESI Act was passed and much less communicated to the Petitioner : a fact admitted by the learned counsel for the Creditor.

3. In the judgment reported as *(2013) 9 SCC 620* *Standard Chartered Bank v. Noble Kumar & Anr.*, it was noted that in view of the law declared by the Supreme Court in the decision reported as *(2004) 4 SCC 311* *Mardia Chemicals v. Union of India*, sub-section 3-A was inserted in the statute book warranting consideration of a response to the notice under Section 13(2) of the SARFAESI Act. In paragraphs 22 and 23 of the decision in *Standard Chartered Bank (supra)*, the Supreme Court emphasized that the response to a notice under Section 13(2) of the SARFAESI Act has to be considered and if the secured creditor concludes that the objections raised by the borrower are not tenable or acceptable, the same shall be communicated with reasons. Thereafter, the noticee would be entitled to proceed under Section 17 of the SARFAESI Act.

4. Inspite of the aforesaid decision, the learned counsel for the Creditor urges that his client was justified in proceeding to take action under Section 14 of the SARFAESI Act, a plea which we

note and reject.

5. Under the circumstances, we declare that the District Magistrate to whom an application was filed under Section 14 of the SARFAESI Act, cannot pass any order under Section 14 and his notice dated 29th October, 2018 calling upon the Petitioner to appear before him is null and void.

6. Since no order has been obtained by Respondent No.2 under Section 14 of the SARFAESI Act, while declaring as above and restraining the District Magistrate to pass any orders on the Application filed by Respondent No.2 under Section 14 of the SARFAESI Act, we would commend to Respondent No.2 to pass an order contemplated by sub-section 3-A of Section 13 of the SARFAESI Act and, in the order, the objections filed by the Petitioner on 18th March, 2018 be considered and disposed of as required by law.

7. The Writ Petition is disposed of in the aforestated terms.

8. No costs.

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

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