

BGP

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2895 OF 2019

Bajaj Finance Limited

..Petitioner

Versus

Nishant Prakashchandra Bhutada & Ors.

..Respondents

Mr. Manoj Prajapati a/w Mr. Chinmay Gupte & Mr. Mohit Gadkari i/
by Mohit Gadkari & Co., Advocates for the Petitioner.

Mr. Mayank Bagla i/by Mr. Avinash Fatangare, Advocate for
Respondent Nos.1 to 3.

Mr. A. I. Patel, AGP a/w Ms. Nisha Mehra, AGP for Respondent
No.8.

Mr. Kunal Shah – Manager of the Petitioner present.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 10th JANUARY, 2020

P.C.

1] The Petitioner is aggrieved by the fact that the learned District Magistrate has not passed an order on an application filed by the Petitioner under Section 14 of the SARFAESI Act, 2002 on account of the fact that on 27th April 2018 an order passed in R.C.S. No.230 of 2018 was communicated to the learned District Magistrate who in turn informed the Petitioner of said order. The order in question has been passed in a suit filed by one Shri. Dattu Raghunath Hadpe against Shri. Nishant Prakashchandra Bhutada to whom the Petitioner claims to have extended a credit.

2] From the nature of the order it is apparent that the claim

of Shri. Dattu Raghunath Hadpe is that he is a tenant in the subject property.

3] Suffice it to state in proceedings under Section 14 of the SARFAESI Act, 2002, learned District Magistrate can appoint an officer to take possession of the secured asset if the same is in possession of the debtor. Learned District Magistrate cannot throw out a tenant.

4] If it is the case of the Petitioner that the suit is a collusive suit, the remedy is to file an application seeking impleadment in the suit and obtain necessary orders.

5] If the Petitioner wants to sell the property on as is where is basis the Petitioner does not need any help from the learned District Magistrate for the reason if property is tenanted the same can be attached and sold but subject to the right of the tenant.

6] It is for the Petitioner to choose what course it should follow.

7] The Writ Petition is misconceived and is therefore dismissed.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2020.01.15
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE