IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO.15700 OF 2018

Shriram Sahakari Bank Limited & Anr. ..Petitioners
Versus
Bank of Maharashtra & Ors. ..Respondents

Mr. T. N. Tripathi i/by T. N. Tripathi & Co., Advocate for the Petitioners.
Mrs. Rathina Maravarman, Advocate for Respondent No.1.
Mr. Y. S. Khochae, AGP for Respondent Nos.2 & 4.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 24th JANUARY, 2020

P.C.

1] The Writ Petitioner challenges the order dated 20th July 2016 passed by the District Magistrate, Nashik exercising power under Section 14 of the SARFAESI Act, 2002 on an application filed by the Bank of Maharashtra. The order appoints the Tahsildar to take possession of the secured asset mortgaged to the Bank of Maharashtra.

2] In the Petition it is stated that the Petitioner had granted a credit to the debtor of the Bank of Maharashtra and in proceedings under the Maharashtra Co-operative Societies Act, 1960 have obtained a decree and in execution thereof the secured asset was taken possession of by the Petitioner.

3] This fact is incorrect as conceded to by the Petitioner and recorded in the order dated 20th July 2016. The Petitioner only took symbolic possession of the secured asset. The possession of the secured asset was with the Digambar Anandrao Pingle the sole proprietor of the 3rd Respondent which had taken credit from the Petitioner Bank as also Bank of Maharashtra.

4] The pleadings in the Writ Petition do not deny that the charge of Bank of Maharashtra as secured creditor would warrant debts due in favour of Bank of Maharashtra to be satisfied before any money can be disbursed to the Petitioner whose status is that of unsecured creditor having a decree.

5] Thus, we find no reason to quash the order dated 20th July 2016 passed by the District Magistrate.

6] We note that pursuant to the order dated 20th July 2016 the Bank of Maharashtra was permitted to sell the property but deposit the sale proceeds with this Court.

7] We see no reason why said order was passed. There was no need for the Court to require sale proceeds to be deposited in the Court for the reason even said order records that Bank of Maharashtra would have a priority of interest. At best, it could be directed that after realising the dues payable to it, if there was a surplus the same should be deposited in this Court or alternatively paid to the Petitioner.

8] The auction has failed on account of the recession in the market. There are no buyers. Bank of Maharashtra was unable to sell the secured asset.

9] Thus, we declare that as and when Bank of Maharashtra sells the secured asset and after adjusting dues payable to it, if there is a surplus, the same shall be paid to the account of the liquidator of the Petitioner.

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

Balaji G. Panchal

Digitally signed by Balaji G. Panchal
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