

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3071 OF 2019

HDFC Bank Limited

..Petitioner

Versus

State of Maharashtra & Ors.

..Respondents

Mr. Chetan Kapadia a/w Mr. Sharath Pai, Ms. Vidisha Rohira & Mr. Sachin Satpute i/by Satpute and Co., Advocates for the Petitioner.

Ms. Geeta Shastri, AGP for Respondent Nos.1 to 3 - State.

Mr. Siddharth Chapalgaonkar i/by Mr. Nitin Deshpande, Advocate for Respondent Nos.4 to 6.

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

DATE : 7th JANUARY, 2020

P.C.

1] The Petitioner had granted credit facilities to Respondent No.4. Respondent Nos.5 and 6 were the guarantors. On 31.03.2011 Petitioner issued a notice under Sub Section (2) of Section 13 of SARFAESI Act, 2002 calling upon the principal debtor and the guarantors to pay ₹ 1,30,31,570.08 as on 31.03.2011. The Petitioner took resort to action under Section 14 of the SARFAESI Act, 2002. Respondent Nos.5 and 6 filed S. A. No.3 of 2019 and could not obtain any order favourable to them.

2] Respondent Nos.5 and 6 filed Regular Civil Suit No.162 of 2019. They pleaded that the mortgage by them of Flat No.102, Adi Ganesh Co-operative Housing Society Ltd. was not valid.

3] We find that the Civil Court has passed an order on 11.07.2019 rejecting the prayer made by said Respondents to restrain the Bank from enforcing the security.

4] The grievance in the Petition is to the measure obtained by the Petitioner under Section 14 of the SARFAESI Act, 2002 not being enforced.

5] Upon notice being issued to Respondent Nos.4 to 6 they appeared through counsel on 10.12.2019. Learned counsel has not filed any Vakalatnama pleading that said Respondents have not executed any Vakalatnama and have not given any instructions. The reason appears to be that Respondent Nos.5 and 6 who are the owners of the Flat and have mortgaged the same appeared before the Tahsildar, Thane and executed a written undertaking dated 06.01.2020 informing the Tahsildar that they would hand over possession of the flat on the same day i.e. 06.01.2020.

6] Learned counsel who appears for the Tahsildar, Thane states that in view of the letter dated 06.01.2020 written by Respondent Nos.5 and 6 to the Tahsildar, he would have to take possession of the flat in question on 09.01.2020.

7] Binding Tahsildar to the statement made by his counsel, we dispose of the Petition.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE

BGP.

2 of 2