FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2698/2017

(BANK OF BARODA, NAGPUR **VERSUS** THE DISTRICT MAGISTRATE, NAGPUR & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri A.T. Purohit, counsel for petitioner.
Shri H.D. Dubey, A.G.P. for R-1 to 3.
Shri V.M. Gadkari, counsel for R-5.

CORAM : A.S. CHANDURKAR AND VINAY JOSHI, JJ.
DATE : JANUARY 29, 2020.

The challenge raised in this writ petition is to the order dated 09.03.2016 passed by the respondent no.1-District Magistrate, Nagpur in proceedings under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the said Act'). By that order, the mortgaged property said to be owned by the respondent no.4-borrower has been ordered to be taken possession of. Pursuant to that order, the possession of the mortgaged property has been taken and the same is presently with the respondent no.5.

Facts briefly stated are that the respondent no.8 entered into an agreement to purchase Flat No.302. He obtained a loan from the ICICI Bank and mortgaged the aforesaid flat with the Bank on 18.07.2005. On failure to clear the loan amount the respondent no.5 which was assigned the loan amount issued a notice under Section 13(2) of the said Act. It thereafter approached the District Magistrate under Section 14 of the said Act. The District Magistrate on 09.03.2016 directed the mortgaged property to be taken over. On 22.09.2016 possession of the said flat was handed over to the respondent no.5. In the interregnum, the respondent no.8 had sold the said property to the respondent no.7 who in turn sold it to the respondent no.6. The respondent no.4 approached the petitioner-Bank to obtain a home loan for purchasing the very same flat from the respondent no.6. Since the respondent no.5 sought to auction the said property, the petitioner has challenged the order dated 09.03.2016.

On behalf of the petitioner, it is submitted by Shri A.T. Purohit, learned counsel that in view of the equitable mortgage dated 11.12.2015 that has been executed in favour of the petitioner, it has a charge over the said property and it was not permissible for the respondent no.5 which was merely relying upon an agreement of sale to initiate proceedings under Section 14 of the said Act and recover possession. It was submitted that in the light of the provisions of Section 54 of the Transfer of Property Act, 1882 there was no right created in favour of the respondent no.5. Reference was also made to the provisions of Section 58(f) of the said Act to indicate absence of any right of the respondent no.5. The learned counsel sought to rely upon the decisions in *Harshad Govardhan Sondagar Versus International Assets Reconstruction Company Limited & Others* [**(2014) 6 SCC 1**] and *Bajarang Shyamsunder Agrawal Versus Central Bank of India & Another* [**(2019) 9 SCC 94**] to urge that this Court could entertain the challenge to the order passed under Section 14 of the said Act and direct possession be restored in favour of the original borrower-respondent no.4.

On behalf of the respondent no.5, Shri V.M. Gadkari, learned counsel submitted that the remedy under Section 17 of the said Act is available to the petitioner for redressal of its grievances. The adjudication of the writ petition would involve consideration of disputed questions as well as the respective rights of the petitioner and the respondent no.5. Placing reliance on the decision in *State of Maharashtra & Others Versus Mahavir Lalchand Rathod & Another* [**1993(2) Mh.L.J. 1492**], it was submitted that the agreement in question entered into by respondent no.8 could be described as a conveyance transferring right, title and interest in the mortgaged property in favour of the creditor and consequently in favour of the respondent no.5. As the agreement in question was duly registered, a right was created in favour of the ICICI Bank which right was thereafter assigned in favour of the respondent no.5. It is thus submitted that considering the limited scope available under Section 14 of the said Act, no interference in the said order was called for.

On hearing the learned counsel for the parties, we find that the nature of mortgage created by the original borrower-respondent no.8 in favour of his creditor would require adjudication. The initial loan agreement entered into with the ICICI Bank is duly registered. On the other hand, the petitioner seeks to rely upon the deed of equitable mortgage created on 11.12.2015 in its favour. Admittedly, it is the respondent no.5 which had initiated the proceedings under Section 14 of the said Act and pursuant thereto it has received possession of the mortgaged property. Presently, the borrower *qua* the petitioner who is respondent no.4 has not sought restoration of possession of the flat which prayer is made by the petitioner in that regard. The question whether the interest transferred in favour of the respondent no.5 after its assignment has the character of a secured interest would also require adjudication. Though it was submitted by the learned counsel for the petitioner that even the Debts Recovery Tribunal had summary jurisdiction in that regard, we find that these questions could be effectively considered by the Tribunal in exercise of powers under Section 17 of the said Act. There cannot be any dispute with the legal propositions laid down in the judgments relied by the learned counsel for the parties. However, in the facts of the present case, we find that it would be in the interests of justice to permit the petitioner to challenge the order passed by the District Magistrate in proceedings under Section 17 of the said Act rather than adjudicating all these questions in exercise of writ jurisdiction.

Hence, we grant liberty to the petitioner to approach the Debts Recovery Tribunal by filing proceedings under Section 17 of the said Act to challenge the order dated 09.03.2016. If such proceedings are initiated within a period of six weeks from today, the same shall be entertained on merits without going into the question of limitation. All points raised by either parties are kept open. The writ petition is disposed of. No costs.

(VINAY JOSHI, J.) **(A.S. CHANDURKAR, J.)**

APTE