IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3421 OF 2017

(Aashi Industries Limited, Kalmeshwar, Dist. Nagpur thr. its signatory Pratap Kumar Nayak Vs. District Magistrate/Collector, Nagpur and others)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Shri P.A. Gode, Advocate for Petitioner.
Shri K.l. Dharmadhikari, AGP for Respondent Nos.1 & 3.

CORAM: RAVINDRA V. GHUGE AND
S.M. MODAK, JJ.

DATE: 11th FEBRUARY, 2020.

1] The petitioner has challenged the order dated 26.10.2016 passed by the Additional District Magistrate under Section 14(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI'). This petition was filed on 6.12.2016 and was listed for the first time on 24.01.2020. No orders have been passed by this Court in this petition.

2] We find that the secured creditor, respondent No.2 has already initiated proceedings against the petitioner and the petitioner has filed a reply dated 01.06.2016 praying to the Additional District Magistrate to reject the application filed by the secured creditor seeking physical possession of the concerned property. On 03.08.2016, the secured creditor has issued a notice under Section 13(4)(d) of the SARFAESI Act read with Rule 4(5)(c)(iii) of the Security Interest (Enforcement) Rules, 2002. The petitioner has responded to the said notice vide reply dated 26.08.2016 stating that the details of the account maintained by the secured creditor be given to the petitioner so that the amount could be deposited.

3] The contention of the petitioner is that the Additional District Magistrate has passed the impugned order under Section 14(2) of the SARFAESI Act, without granting a personal hearing to the petitioner. The record however, reveals that the petitioner has submitted a detailed written say in response to the application of the secured creditor, before the impugned order came to be passed.

4] It is for more than three years that this petition is simply pending in this Court and the learned Advocate is unaware as to what developments have taken place under the SARFAESI Act in view of the proceedings initiated by the secured creditor under Section 13(4).

5] We find from Section 17(1) that any person aggrieved by any of the measures referred to under Section 13(4) having been taken by the secured creditor, would give a right to the aggrieved person to approach the Debts Recovery Tribunal within forty-five days from the date on which such measures have been taken. The notice of the secured creditor dated 03.08.2016 and the reply of the petitioner dated 27.08.2016, indicate that it is in response to the steps initiated by the secured creditor under Section

13(4)(d) of the SARFAESI Act and it is mentioned in the reply that the Bank has purportedly taken the possession of the property on 26.11.2015 and 30.11.2015 by affixing notices at the premises occupied by the petitioner.

6] Considering the above, we find that this petition has been filed before this Court to dodge the proceedings under the SARFAESI Act. We are the opinion that this petition may have been filed with oblique motives.

7] In view of the above, we do not intend to invoke our jurisdiction under Article 226 in this matter, keeping in view that the special statute is in place to deal with the grievance of the petitioner. So also, the order passed by the National Company Law Tribunal, Ahmadabad Bench dated 06.09.2019, would be of no assistance to the petitioner. This petition therefore, is dismissed. The dismissal of this petition would not be an impediment for the petitioner to avail of a remedy as may be permissible in law.

(S.M. Modak, J.) **(Ravindra V. Ghuge, J.)**

Nikhare