IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.683 OF 2014
WITH
MISC. CIVIL APPLICATION NO.730 OF 2021 (Filing No.)

1. GAURAVI G. BANDODKAR,
   major of age, Indian national,
   resident of Flat No. F3, 3rd Floor,
   Ana Apartments, St. Inez,
   Panaji, Goa.

2. SEEMA VINAY KUNDAIKAR,
   major of age, Indian national,
   resident of Flat No. 3, 1st Floor,
   Ana Apartments, St. Inez,
   Panaji, Goa.

3. SHAIKH BARKAT ALI,
   major of age, Indian national,
   r/o Flat No. S1 – S2, Ana Appts.,
   Inez, Panaji, Goa.

[4. RAZIA BI SAYED
major of age, Indian National
resident of Flat No.F1, 1st Floor,
Ana Apartments, St. Inez,
Panaji Goa. Transposed as Respondent No.9 in
view of order dated 21.09.15 passed in MCA
568/2015]

4. PRATIMA N. VOLVOIKAR,
   major of age, Indian national,
   Shop No. 1, Ana Apartments,
   St. Inez, Panaji, Goa.

5. PRASHANT HUNCHIMANI,
   major of age, Indian national,

r/o Flat No. 11/143/5, 1st Floor,
Ana Apartments, St. Inez,
Panaji, Goa.

6. GOVIND NAIK,
major of age, Indian national,
r/o Flat No. 14/15, Ana Appts.,
St. Inez, Panaji, Goa.

... Petitioners.

Versus

1. THE STATE OF GOA,
through the Chief Secretary,
Government of Goa,
Secretariat, Alto Porvorim,
Bardez, Goa.

2. THE DISTRICT MAGISTRATE,
North Goa District,
Collectorate Building,
Panaji, Goa.

3. MAMLATDAR OF TISWADI,
Collectorate Building, Panaji, Goa.

4. MAPUSA URBAN CO-OP.
BANK OF GOA LTD.,
through its Authorised Officer,
having its office at "Nandadeep",
Mapusa, Bardez, Goa.

5. GURUNATH MAHADEO GODKAR,
major of age, resident of
Government Quarters, "C" Type,
Near Sati Temple, Bhatlem,
Panaji, Goa, and Ana Appts.,
St. Inez, Panaji, Goa.

6. THE CIRCLE INSPECTOR,
Office of the Mamlatdar of Tiswadi,
Collectorate Building, Panaji, Goa.

7. THE TALATHI OF PANAJI,
Office of the Mamlatdar of Tiswadi,
Collectorate Building, Panaji, Goa.

8. THE POLICE INSPECTOR,
Panaji Police Station, Panaji, Goa.

9. RAZIA BI SAYED,
Major,
R/o. Flat No. 1, 1st Floor,
Ana Apartments, St. Inez,
Panjim, Goa. ... Respondents.

Mr. A. D. Bhobe with Ms. K. Govenkar, Advocate for the Petitioners.

Mr. P. Arolkar, Additional Government Advocate for Respondent Nos.1, 2, 3, 6, 7 and 8.

Mr. J. P. Mulgaonkar, Senior Advocate with Ms. Rupa Banaulikar, Advocate for Respondent No.4.

Coram:- ***DIPANKAR DATTA,CJ &***
M. S. SONAK, J
Date:- 22nd March 2021

ORAL JUDGMENT ***(Per M. S. Sonak, J)***

Heard Mr. A. D. Bhobe with Ms. K. Govenkar, learned counsel for the Petitioners, Mr. P. Arolkar, learned Additional Government Advocate for Respondent Nos. 1, 2, 3, 6, 7, and 8 and Mr. J. P. Mulgaonkar, learned Senior Advocate with Ms. Rupa

Banaulikar for Respondent No.4.

2. At the request of Mr. Bhobe, leave is granted to sue Respondent No.4 through its Liquidator Daulat Hawaldar. Necessary amendment to be carried out forthwith.

3. Ms. Banaulikar states that she has instructions to appear on behalf of the Liquidator.

4. The main challenge in this petition is to the order dated 13th August 2014 made by the District Magistrate for taking over the possession of flat No.F2 on the first floor and flat No.143/12 on the third floor and the shop of Shitala Industries at St. Inez, Panaji Goa (the said premises) under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) and notice dated 20th October 2014 issued by the Mamlatdar of Tiswadi Taluka in pursuance of the order dated 13th August 2014.

5. The Petitioners contend that they have acquired an interest in the said premises in pursuance of the agreements for sale with the original owners of the property in which the said premises came to be constructed. They have contended that they did not know about the transactions entered into by Respondent No.5 with the Mapusa Urban

Co-operative Bank of Goa Ltd. (Respondent No.4). They have contended that the District Magistrate should therefore not have made any orders concerning the said premises without hearing the Petitioners since, the Petitioners, have neither availed any loan from the Respondent No.4 -Bank nor are parties to the transactions involving the Respondent Nos.4 and 5. The Petitioners contend that they have no alternate and efficacious remedy available to them and therefore, the reliefs as prayed for in this petition be granted, and the interim order made on 3rd November 2014 be made absolute.

6. Mr. Mulgaonkar, learned Senior Advocate appearing for Respondent No.4/Liquidator submits that the said premises were mortgaged in favour of Respondent No.4- Bank by Respondent No.5 to secure a term loan. He pointed out that Respondent No.5 defaulted and on 25th October 2005 a notice was issued under Section 13(2) of the SARFAESI Act, 2002 calling upon the Respondent No.5 to pay a sum of ₹37,65,169.42 as of 30th September 2005 together with interest and costs. There was no compliance by Respondent No.5 and therefore the Respondent No.4-Bank was entitled to take steps under the SARFAESI Act, 2002, which it has taken in the present matter.

7. Mr. Mulgaonkar pointed out that a prior mortgage cannot be defeated by the Petitioners based on subsequent agreements for sale, which, in any case, create no title or interest in the Petitioners.

8. Mr. Mulgaonkar submits that in any case, the Petitioners have an alternate and efficacious remedy available to them before the Debt Recovery Tribunal (DRT) in terms of SARFAESI Act, 2002 and therefore, this petition may not be entertained. He submits that there is no necessity of opportunity of hearing by a District Magistrate when exercising powers under Section 14 of the SARFAESI Act, 2002. He, therefore, submits that this petition may be dismissed, if necessary, by relegating the Petitioners to the alternate remedy under the SARFAESI Act, 2002.

9. Mr. Arolkar, learned Additional Government Advocate also submits that the Petitioners have an alternate and efficacious remedy available under the SARFAESI Act, 2002 and therefore, this petition may not be entertained.

10. In the present case, the petitioners mainly challenge the action of the Magistrate under Section 14 of the SARFAESI Act, 2002. It is by now, well settled that the Magistrate, under Section 14 of the SARFAESI Act, 2002, basically aids and assists the Banks to attach and take possession of secured assets. Section 13 (4) of the SARFAESI Act, 2002, empowers the Banks to take possession of the secured assets without the intervention of the Courts or by seeking the assistance of the Magistrate under Section 14 of the SARFAESI Act, 2002. It is by now, well settled that the Bank, by applying to the Magistrate to take

action under Section 14 of the SARFAESI Act, 2002, is taking one of the measures, as contemplated by Section 13 (4) of the SARFAESI Act, 2002. There is also no dispute that as against the measures under Section 13 (4) of the SARFAESI Act, 2002, any person, including the borrower, if aggrieved by any of the measures under Section 13 (4) of the SARFAESI Act, 2002, by the secured creditor, can make an application to the Debt Recovery Tribunal (DRT) within 45 days from the date on which such measures have been taken. The application to be made under Section 17 of the SARFAESI Act, 2002, is virtually like an original proceeding and the DRT, has sufficient powers to examine all issues, including the issue as to whether the property in question is indeed a secured asset or not. Since, action under Section 14 of the SARFAESI Act, 2002, is a measure under Section 13 (4) of the SARFAESI Act, 2002, undoubtedly, as against such a measure, any person aggrieved can apply before the DRT to seek redressal.

11. The aforesaid means that any party, which includes the present petitioners, if aggrieved by any action under Section 14 of the SARFAESI Act, 2002, has an alternate as well as an efficacious remedy before the DRT in such matters.

12. In the precise context of the High Courts entertaining the petitions under Articles 226 and 227 of the Constitution of India when it comes to challenging the action under the SARFAESI Act, 2002, the Hon'ble Supreme Court, in ***ICICI Bank Ltd., Vs Umakanta***

Mohapatra[1] made the following order :-

> "*Delay condoned.*
>
> *Leave granted.*
>
> *Despite several judgments of this Court, including a judgment by Hon'ble Mr. Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets (NPAs).*
>
> *The writ petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-*
>
> > *"18. We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another, (1997) 6 SCC 450, observing:-*
> >
> > *"32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."*
> >
> > *The writ petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.*
> >
> > *The appeals are allowed in the aforesaid terms.*

1 Civil Appeal Nos. 10243-10250 of 2018

Pending applications, if any, shall stand disposed of."

13. Apart from the aforesaid order, there are several decisions of the Hon'ble Supreme Court[2],[3],[4],[5],[6],[7], in which, it is held that the parties must be relegated to remedies available under the SARFAESI Act, 2002, and ordinarily, such matters should not be examined in the exercise of extraordinary jurisdictional under Articles 226 and 227 of the Constitution. The Petitioners have not made out any case to depart from this ordinary practice. All contentions now raised can very well be looked into by the DRT particularly, since the contentions involve the disputed questions of fact.

14. Earlier there was some dispute as to whether the provisions of the SARFAESI Act, 2002 will apply to the Co-operative Banks. Even that issue has now been settled and the Petitioners did not contend that the provisions of the SARFAESI Act, 2002 do not apply to the Co-operative Banks like the Mapusa Urban Co-operative Bank of Goa Ltd.

15. Mr. Bhobe then submitted that the interim relief made by this Court on 3rd November 2014 may be continued for at least six months since the DRT is located in Mumbai and during these times, it will not be easily possible for the Petitioners to move the DRT and obtain interim orders.

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2 Authorized Officer, State Bank of Travancore & Ors., Vs. Matthew K. C.(Manu/SC/0054/2018)
3 Hari Trading Corporation & Ors., Vs Bank of Baroda and Ors. (Manu/SC/0863/2005)
4 Kanaiyalal Lalchand Sachdev & Ors., Vs State of Maharashtra and Ors. (Manu/SC/0103/2011)
5 Standard Chartered Bank Vs Noble Kumar and Ors., (Manu/SC/0874/2013)
6 United Bank of India Vs Satyawati Tondon and Ors (Manu/SC/0541/2010)
7 Transcore Vs Union of India (Manu/SC/5319/2006)

16. Now that the interim orders were operating since 3rd November 2014, we see no difficulty, in the peculiar circumstances of the present case to extend such interim orders for three months from today. If within this period of three months, the Petitioners do not take out the proceedings before the DRT and secure any interim order therein, the Respondents will be at liberty to proceed with their action under the SARFAESI Act, 2002.

17. For all the aforesaid reasons, we dismiss this petition but grant liberty to the Petitioners to take out the appropriate proceedings before the DRT. The DRT may take into consideration the fact that this petition was pending in this Court from 3rd November 2014 till date. Further, we extend the interim order granted on 3rd November 2014 for three months from today.

18. We clarify that we have not examined the rival contentions on merits and therefore, all contentions of all parties are expressly left open for determination by the DRT should, the Petitioners indeed avail of alternate remedy before the DRT.

19. This writ petition and Misc. Civil Application No.730 of 2021(F) are disposed of in the aforesaid terms. There shall be no order as to costs.

20. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J **CHIEF JUSTICE**

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