

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5205 OF 2021

ASREC (India) Ltd. ..Petitioner
vs.
State of Maharashtra and ors. ..Respondents

Mr. Nikhil Rajani a/w Apoorva Kulkarni i/b. M/s. V.
Deshpande and Co. for petitioner.
Ms. R.A. Salunkhe, AGP for the State.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: NOVEMBER 25, 2021

P.C.:

1. The petitioner, being a secured creditor, approached the District Collector, Kolhapur under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter "the SARFAESI Act" for short). An order was passed by the Collector on February 26, 2021 appointing the Tahsildar, Taluka Karveer, District Kolhapur, respondent no.2, to take possession of the secured asset which was the subject

matter of the application under section 14 of the SARFAESI Act.

2. Grievance of the secured creditor now is that the Tahsildar has not been implementing the order of the Collector.

3. Ms. Salunkhe, learned AGP appearing for the respondent no.1 as well as the Tahsildar has drawn our attention to page 25 of the writ petition. It appears to be a public notice, issued by the Receiver appointed by the Court of Munsiff in the state of Bihar in Title Suit No.102 of 2021, to the effect that the properties being plot No.B135, B97, B77, Five Star MIDC Kagal, Kolhapur-416236 are under physical possession of the Court of Munsiff. According to Ms. Salunkhe, since the secured asset is in the physical possession of the Court of Munsiff, the Tahsildar has rightly not proceeded to implement the order of the Collector.

4. We are of the view that the secured asset being *custodia legis*, the remedy of the secured creditor lies in seeking intervention in the civil suit pending in the Court of Munsiff and pray for appropriate orders before such Court to

enable the Tahsildar take possession of the secured asset and hand it over to the secured creditor.

5. With liberty to the secured creditor to pursue the appropriate legal remedy, this writ petition is disposed of.

No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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