

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

**INTERIM APPLICATION NO. 2664 OF 2021
IN
WRIT PETITION NO. 1656 OF 2020**

ASREC (India) Ltd.	}	Applicant
In the matter between		
Sujit Dattatray Yende and Anr.	}	Petitioners
Versus		
The Bharat Co-operative	}	
Bank Ltd. and Anr.	}	Respondents

**WITH
WRIT PETITION NO. 1656 OF 2020**

Sujit Dattatray Yende and Anr.	}	Petitioners
Versus		
The Bharat Co-operative	}	
Bank Ltd. and Anr.	}	Respondents

Mr. Nikhil Rajani with Ms. Apoorva Kulkarni i/b.
V. Deshpande and Co. for the applicant.

Ms. Priyanka Fadia i/b. Mr. Shashank Fadia for
the petitioners.

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

DATE :- OCTOBER 5, 2021

PC :-

1. This is an application for substitution by ASREC (India) Limited, a company incorporated under the Companies Act, 1956. It is claimed in the application that the debt of the

Bharat Co-operative Bank Limited, the respondent no. 1, has been assigned to the applicant by a deed of assignment dated 25th March 2021 and, therefore, the applicant has now stepped into shoes of the respondent no. 1.

2. Having heard learned advocates for the applicant as well as the petitioners and considering the deed of assignment dated 25th March 2021, we allow the application for substitution and direct that in place of the respondent no. 1 and its authorized officer, the respondent no. 2, the applicant be impleaded as the sole respondent in the writ petition.

3. Office is directed to incorporate appropriate amendment in the cause title of the writ petition.

4. The interim application stands disposed of. There shall be no order as to costs.

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5. With the consent of the parties, the writ petition is now taken up for consideration.

6. It appears that an order dated 4th May 2019 passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai in SA No. 90 of 2019, being an application under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act" for short) at the instance of the respondents 1 and 2 (since substituted by the above order), is under challenge.

7. It is not disputed at the bar by Ms. Fadia, learned advocate for the petitioners that although possession of 2 (two) flats had been taken by the respondents 1 and 2, possession of the remaining 2 (two) flats has not been taken because of the assurance given on behalf of the respondents 1 and 2 (since substituted) before the Court on 18th February 2020 that the order of the Magistrate would not be enforced. In our opinion, this writ petition ought not to have been entertained in view of the remedy available to the petitioners under section 17 of the SARFAESI Act.

8. Be that as it may, since the order of the Magistrate could not be enforced because of entertainment of this writ petition, we grant liberty to the petitioners to approach the jurisdictional Debts Recovery Tribunal (hereinafter "the Tribunal", for short) under section 17 of the SARFAESI Act within 2 (two) weeks from date. If such an application is made, the Tribunal shall proceed to decide the same in accordance with law. For a period of 2 (two) weeks the order dated 4th May 2019 may not be enforced. However, this shall be subject to further order being passed by the Tribunal if it is approached by the petitioners.

9. With the aforesaid observations, the writ petition stands disposed of. There shall be no order as to costs.

SALUNKE
J V

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by SALUNKE J V
Date: 2021.10.06
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(M. S. KARNIK, J.)

(CHIEF JUSTICE)