

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**  
**NAGPUR BENCH : NAGPUR.**

**WRIT PETITION NO.3283/2021**

1. Venus Multispecialty Hospital Pvt. Ltd.,  
Flat No.B-4, 4<sup>th</sup> Floor, Ganga Classic  
Apartments, Behind H.P. Petrol Pump,  
Kadbi Chowk, Kamptee Road, Nazul  
Plot No.41 and 42, Nagpur, Municipal  
Council House No.990 and 991, Ward  
No.93, Mouza Wadpakhad, District  
Nagpur - 440 014.
2. Miss. Rashmi Rajesh Baghe,  
age Major.
3. Mr. Tulsiram Jairamji Baghe,  
age Major.
4. Mr. Rajesh Tulsiram Baghe,  
age Major.

Nos.2 to 4 are R/o Apartment No.2,  
B Wing, Ground Floor, 31-8,  
Priyadarshani Colony, Near R.T.O., Civil  
Lines, Nagpur.

5. PrestorsMadans Hospital, Ambedkar Road,  
Budmi Nagar, Plot No.BN, BY-9, Nagpur.

..Petitioners.

..Vs..

1. The Debts Recovery Tribunal,  
through its Presiding Officer, Nagpur  
Bench, Nagpur.
2. The Kotak Mahindra Bank Limited,  
through its Authorized Officer, Plot  
No.8, 1<sup>st</sup> Floor, W.H.C. Road, Shankar  
Nagar, Dharampeth, Nagpur - 440 010  
also having registered office at 27 BKC,

G Block, Kurla Complex, Bandra (East),  
Mumbai.

..Respondents.

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Mr. S.C. Daga, Advocate with Mr. Chetan R. Sharma, Advocate for the petitioners.  
Mr. Manish G. Sharma, Advocate for respondent No.2.  
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**CORAM :- SUNIL B. SHUKRE AND**  
**ANIL S. KILOR, JJ.**  
**DATED :- 1.9.2021.**

**ORAL JUDGMENT** *(Per Sunil B. Shukre, J.)*

Heard Shri Daga, learned counsel for the petitioners. He submits that the legal rights made available to the aggrieved parties like the petitioners under the provisions of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (for short “SARFAESI Act”) are subverted and are not being allowed to be exercised by the respondent No.1 by resorting to proper procedure prescribed under the law. He submits that respondent No.2, after issuance of demand notice under Section 13(2) of the SARFAESI Act, agreed for resolution of the dispute between the petitioners and respondent No.2 by taking recourse to arbitration proceedings and accordingly, Mr. C. Prasanna Venkatesh has been appointed as the sole Arbitrator in the matter. It is further submitted by the learned counsel for the petitioners that now arbitration proceedings are pending and sole Arbitrator is seized of the matter. However, it is further submitted that respondent No.2, inspite of

pendency of the arbitration proceedings, having agreed to take recourse to an alternate remedy available under Section 11 of the SARFAESI Act, suddenly filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Nagpur and surprisingly respondent No.2 suppressed the material fact of the initiation of the arbitration proceedings at the instance of respondent No.2 and the petitioners and pendency of the arbitration proceedings and obtained an order of taking over of possession of the secured assets which comprise hospital building and other properties in a coercive manner. It is further submitted that the order was passed by the learned District Magistrate on 16.3.2021 and on learning about it, the petitioners immediately approached the Debt Recovery Tribunal, Nagpur by filing an application No.157/2021 on 26.3.2021 and prayed for grant of an urgent hearing. It is further submitted that unfortunately the urgent hearing and not even a single hearing till date has been granted to the petitioners by the Debt Recovery Tribunal and the result is that the respondent No.2 is being permitted to go ahead with its illegalities in the matter by means of misrepresentation and suppression of material facts on one hand and the petitioners are being prevented from exercising the rights available to them under the law on the other hand.

2. There is no need to issue any notice to respondent No.1 it being a formal party.
3. Issue notice to respondent No.2.
4. Mr. M.G. Sharma, learned counsel waives notice for respondent No.2. He submits that the respondent No.2 is a caveator and no notice has been given to respondent No.2.
5. At this stage, we do not wish to go into the merits of the submissions made by the learned counsel for respondent No.2 and suffice it to say that all that has been prayed for in this petition is grant of urgent hearing by respondent No.1 and if it is to be granted, respondent No.2 will certainly get an opportunity of hearing before the Debt Recovery Tribunal. Hence, **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties before this Court.
6. Considering the submissions made across the Bar which, on perusal of the Annexures to the petition, appear to be having *prima facie* substance in them, we are of the view that the interests of justice would lie in the Debt Recovery Tribunal, Nagpur granting an urgent hearing to the petitioners in the present case. Accordingly, we request

respondent No.1 to grant urgent hearing to the petitioners on the applications filed by them before it on 20<sup>th</sup> September, 2021. The petitioners and respondent No.2 are directed to appear before the Debt Recovery Tribunal, Nagpur on 20<sup>th</sup> September, 2021 at 11 a.m. and decide the applications, on their own merits, in accordance with law, as expeditiously possible. In the meantime, we direct that the order dated 16.3.2021 passed by the District Magistrate, Nagpur shall be kept in abeyance, till the applications filed by the petitioners are decided by the Debt Recovery Tribunal, Nagpur. Rule accordingly. No costs.

**JUDGE**

**JUDGE**

*Tambaskar.*