

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

914 WRIT PETITION NO.1511 OF 2022

**VIRENDRA GULAB MAHAJAN & ANOTHER
VERSUS
CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED & OTHERS**

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Advocate for the petitioners : Mr.S.B.Deshpande h/f.
Mr.S.S.Deshpande
AGP for Respondent-State : Mr.A.R.Kale

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**CORAM : S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATE : 02.02.2022

P.C. :

1] Mr.Deshpande, learned counsel for the petitioners submits that on 30th July, 2021, respondent no.1 issued demand notice to the petitioners under Section 13 [2] of the Securitization and Reconstruction of Financial Enforcement of Security Interest Act, 2002 [for short 'SARFAESI Act']. Subsequently, on 29th September, 2021, again respondent no.1 issued notice to the petitioners purportedly invoking the provisions of the Arbitration and Conciliation Act. Learned counsel for the petitioners submits that the petitioners are not understanding under which

provisions the respondents are proceeding against the petitioners.

2] At present, the petition of the petitioners would be premature. After issuance of notice under Section 13 [2] of the SARFAESI Act, the petitioners have raised objections under Section 13 [3] of the said Act and the possession under Section 13 [4] is normally symbolic possession. For physical possession, the creditor has to resort to the remedy under the provisions of Section 14 of the SARFAESI Act. In that case, if the respondent is taking action against the petitioners under Section 13 [4] and 14 of the SARFAESI Act then the petitioners have remedy available to assail the same.

3] As far as notice issued under the provisions of Arbitration and Conciliation Act is concerned, the matter has to be decided by the Arbitrator first and the judgment of the Arbitrator can be challenged under Section 34 of the said Act. In the present case, both eventualities have not yet taken place.

4] We cannot presume that the respondents would not adhere to the provisions of law before taking action against the petitioners.

5] With the above observations, Writ Petition is disposed of. No costs.

[S.G.DIGE, J.]

[S.V.GANGAPURWALA, J.]

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