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

WRIT PETITION NO. 792 OF 2022

Shriyash Shashikant Kulkarni ..Petitioner
vs.
Fullerton India Credit Company Ltd.
through its Directors and ors. ..Respondents

Mr. Ajit Tamhane a/w. Mr. Yash Juwatkar i/b. Ms. Tamhane &
Co. for petitioner.
Ms. Gauri Kulkarni for respondent no.3.
Mr. M. S. Chunawala a/w. Mr. Ashutosh Misra for respondent
no.5 – UOI.
Mr. P. P. Kakade, GP a/w. Ms. Nisha Mehra, AGP for State.

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

DATE : JANUARY 27, 2022.

P.C. :

1. This writ petition is entertained having regard to the order dated December 16, 2021 passed by the Supreme Court of India in Special Leave Petition (C) No. 10911 of 2021 (**State Bar Council of Madhya Pradesh Vs. Union of India**).

2. The petitioner, a borrower, claims that possession of the secured asset has been taken and handed over to the secured creditor in breach of the order dated November 22, 2021 passed by the Presiding Officer, Debts Recovery

Tribunal, Pune, on Interlocutory Application No. 718 of 2021 in Miscellaneous Application No. 18 of 2021. According to Mr. Ajit Tamhane, learned counsel appearing for the petitioner, paragraph 5 of the said order has been breached. For facility of convenience, we quote paragraph 5 below: -

“5. Let the defendant Company file reply. It is made clear that the possession can be taken only by the person authorised by the District Magistrate/District Collector and no delegation should be done. It is made clear if any delegation is done, then possession will be restored back.”

3. Having considered the contentions raised by the petitioner, we find the same to be without substance. The order under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter “the SARFAESI Act”, for short) passed by the Upper Collector, Pune, dated May 24, 2019, has appointed the Executive Magistrate and Resident Nayab Tahsildar, Pune City, for taking possession. The order also requires that the procedure for possession should be conducted through the Mandal Officer.

4. In pursuance of such order, the Tahsildar and Taluka Executive Magistrate, Pune City, issued a notice dated December 7, 2021 putting the petitioning borrower on notice that an action to hand over physical possession of the said property to Shri Prashant Ohal, authorised officer of the secured creditor, would be conducted on December 28, 2021, at 10.00 a.m. The notice has been acted upon and the petitioning borrower has since been dispossessed

from the secured asset. The contention of the petitioner is that possession could not have been handed over to Shri Prashant Ohal.

5. We have failed to comprehend the justifiability of such a contention. The possession of the secured asset was indeed taken by the officer appointed by the Upper Collector, Pune, whereupon such officer proceeded to hand over the possession to Shri Prashant Ohal. Whether the latter is authorized to take possession of the secured asset on behalf of the secured creditor cannot be a matter of concern for the petitioning borrower. It is for the secured creditor to feel aggrieved if it has not been delivered possession in terms of the order of the Upper Collector, Pune. We see no breach of the provisions of section 14(1-A) of the SARFAESI Act.

6. The writ petition being devoid of any merit, stands dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)