

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

WRIT PETITION NO. 1538 OF 2022

Shivaji Kisanrao Ghuge & Anr.

...Petitioners

V/s.

Bank of Maharashtra & Anr.

...Respondents

Mr. Rameshwar N. Gite for the petitioners.

Mr. M.M. Pable, AGP for the State.

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

DATE: MARCH 1, 2022

P.C.:

1. This writ petition dated 25th January 2022 seeks to assail an order dated 4th March 2021 passed by the District Magistrate, Nashik in Securitisation Case No. 31 of 2019 initiated by the respondent no. 1 (secured creditor) under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act", for short) as well as consequential notice dated 28th December 2021 issued by the Tehsildar, Nashik informing the petitioner that possession of the secured asset would be taken on 20th January 2022 between 9.00 a.m. and 5.00 p.m.

2. This writ petition suffers from the defect of non-joinder of necessary parties. Neither the District Magistrate, Nashik nor the Tehsildar, Nashik, is a respondent. This is one of the grounds on which the writ petition ought to fail.

3. Even otherwise, we are informed by Mr. Gite, learned advocate for the petitioners that possession of the secured asset, in terms of the impugned notice of possession dated 20th December 2021, was not taken by the Tehsildar on 20th January 2022 upon receipt of an intimation that one of the petitioners was infected with Covid.
4. No fresh notice of possession has been issued. We are of the view that the petitioner has a remedy before the jurisdictional Debts Recovery Tribunal under section 17 of the SARFAESI Act and that none of the exceptions on the fulfillment whereof a writ petition could be entertained despite availability of an alternate remedy is fulfilled in the present case. In such view of the matter, question of entertaining this writ petition does not arise.
5. The writ petition stands dismissed, without costs.
6. This order shall, however, not preclude the petitioner to avail the statutory remedy made available to him by section 17 of the SARFAESI Act, in accordance with law.
7. If the Tribunal is approached, it shall proceed to decide the application of the petitioner without being influenced by dismissal of this writ petition.
8. All contentions are left open.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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