

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1478 OF 2022**

Narayan Pedasubbaiah Chintham & Anr. ... Petitioners

Versus

The State of Maharashtra & Anr. ... Respondents

Mr.Vaibhav V. Ugle for the Petitioners.

Mrs.Ashwini A. Purav, A.G.P for Respondent No.1.

Mr.Nikhil Rajani a/w. Ms.Apoorva Kulkarni i/b. V.D. Deshpande & Co. for Respondent No.2-Bank.

**CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.**

DATE : 16th FEBRUARY 2022.

PC. :-

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioners seek Order and direction directing the quashing and setting aside possession Notice dated 27th January 2022 and also Order and direction not to take any coercive action including the steps to auction the said property described in prayer Clause (b) to the Petition.

2. A perusal of the *praecipe* filed by the Petitioners dated 16th February 2022 clearly indicates that, the Respondent No.2-Bank has already taken possession pursuant to the said notice dated 27th January 2022.

3. Learned counsel for the Respondent No.2-Bank tendered a compilation of three documents and states that, the bank has already taken physical possession of the property in-question. He also relied upon the panchanama showing physical possession of the secured assets. He submits that, in view of the bank already having taken physical possession of the secured assets, nothing survives in this Petition.

4. Mr.Ugle, learned counsel for the Petitioners states that his clients would approach the Debts Recovery Tribunal for impugning the action on the part of the bank to take physical possession of the property and for other reliefs. He however states that the Petitioners' son is going to appear for certain exams and his study material are lying in the suit premises. He seeks permission to remove such study material from the suit premises. The statement is accepted.

5. We direct the Respondent No.2 to permit the Petitioners to remove such study material within one week from today. It is made clear that the Petitioners shall not remove any other material lying in the suit premises.

6. We direct the Respondent No.2 to permit the Petitioner to remove such study material under a separate panchanama within one week from today. The Respondent No.2 shall depute an Officer of the bank at the time of the Petitioner removing such study material from the suit premises. It is made clear that, the Petitioners shall maintain decorum at the time of removing the

study material from the suit premises.

7. At this stage, Mr.Ugle, learned counsel for the Petitioners states that, certain essential items are also lying in the suit premises which may be allowed to be removed. The Petitioners are at liberty to send the list of such essential items, which according to the Petitioners are lying in the suit premises to the bank. The bank shall consider the said request in accordance with law.

8. Writ Petition is disposed off in aforesaid terms.

9. There shall be no Order as to costs.

10. It is made clear that, this Court has not expressed any views on the merits of the application to be filed by the Petitioners under Section 17 of The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993. All contentions of the parties in the said application are kept open.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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