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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2336 OF 2022
WITH
INTERIM APPLICATION NO. 1206 OF 2022**

Enkay Castle ..Petitioner
vs.
Union of India and ors. ..Respondents

Mr. Manoj Harit i/b. Manoj Harit & Co. for
petitioner/applicant.
Smt. S. V. Bharucha for respondent no.1.
Mr. B.V. Samant, AGP for State.
Mr. Charles D'souza a/w Ms. Jyoti Sanap i/b. M/s. V.
Deshpande & Co. for respondent nos. 4 and 5.

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

DATE : MARCH 21, 2022

P.C. :

1. The petitioner, Enkay Castle, is a debtor of the respondent no. 4, Anand Rathi Global Finance Limited. The petitioner having failed to clear its liability despite notice dated February 6, 2019 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act", for short), the respondent no. 4 approached the District Magistrate, Thane under section 14. An order was passed granting the application of the respondent no.4, whereby the Tahsildar-cum-Executive Magistrate, Thane

was authorized by the District Magistrate, Thane to take possession of the secured asset. Since such Tahsildar was not taking any action to enforce the order passed under section 14 of the Act, the respondent no. 4 had the occasion to invoke the writ jurisdiction of this Court by preferring Writ Petition No. 218 of 2022. Such writ petition was considered by a co-ordinate Bench of this Court on February 2, 2022. Having noticed that the Tahsildar, Thane by a notice dated February 2, 2022 had fixed March 3, 2022 at 11.30 a.m. as the date and time to take possession of the secured asset and to forward the same to the authorized officer of the respondent no. 4, the coordinate Bench proceeded to dispose of the writ petition directing the Tahsildar, Thane to remain personally present on the scheduled date and time for the purpose of taking and forwarding possession of the secured asset to the respondent no. 4.

2. After disposal of Writ Petition No.218 of 2022, the petitioner moved this Court by preferring the instant writ petition wherein it challenged the order dated March 18, 2020 passed by the Debts Recovery Tribunal, Vashi, Navi Mumbai in Securitisation Application No. 16 of 2020. Considering the then prevailing situation of the office of the Chairperson of the Debts Recovery Appellate Tribunal, Mumbai (hereafter "DRAT(M)", for short) being vacant, we entertained this writ petition on March 3, 2022 having regard to the order dated December 16, 2021 of the

Supreme Court of India in Special Leave Petition (C) No. 10911 of 2021 (**State Bar Council of Madhya Pradesh Vs. Union of India**). By an order passed on that date, we had stayed the notice of the Tahsildar, Thane fixing March 3, 2022 as the date for taking possession of the secured asset unconditionally, for a period of a fortnight from date. Within such period of fortnight, the petitioner was required to deposit 50% of the amount claimed in the notice issued under section 13(2) of the Act, i.e., a sum of Rs.9,35,30,385/-. It was made clear that in case of failure of the petitioner to deposit the said amount within a fortnight, the notice dated February 2, 2022 of the Tahsildar, Thane shall become enforceable and the secured creditor (respondent no. 4) would be at liberty to urge such tahsildar to take possession of the secured asset in terms of the order of the District Magistrate, Thane and forward the same to the secured creditor.

3. The writ petition has been listed today in terms of the order dated March 3, 2022. At the time of hearing, we are informed by the learned advocate for the petitioner that it has failed to deposit the sum of Rs.9,35,30,385/-. A prayer is made for extension of a week's time to put in such amount, failing which the petitioner shall deliver peaceful and vacant possession of the secured asset to the respondent no. 4 voluntarily.

4. The prayer of the learned advocate for the petitioner is opposed by Mr. D'souza, learned advocate for the

respondent no.4. According to him, if at all the petitioner's prayer for time is accepted, he ought to be put on terms requiring him to pay the entire amount due and payable to the respondent no. 4.

5. Our attention is further drawn by Mr. D'souza to the order dated February 2, 2022 in Writ Petition No. 218 of 2022 referred to above in support of his contention that the respondent no. 4 had to obtain an order from this Court for activating the Tahsildar, Thane to enforce the order of the District Magistrate, Thane under section 14 of the Act. It is also his contention that the petitioner has taken undue advantage of the indulgence shown by the Court and, in the process, has been successful in stalling the process of taking over possession of the secured asset. Such a petitioner, according to him, is not entitled to any further equity.

6. Having heard learned advocates for the parties, we are of the considered view that the petitioner having failed to avail the opportunity of making payment of 50% of the dues, it is not entitled to any further indulgence. Also, having regard to the facts and circumstances of this case, we ought to allow the respondent no. 4 to take further steps in accordance with law for taking possession of the secured asset. If a request is made by the respondent no. 4 to the Tahsildar, Thane to fix an early date for such purpose, such request ought to be accepted and steps expedited. At the same time, it would be open to the petitioner to

approach the DRAT(M), which is now available from March 16, 2022, to obtain appropriate orders in accordance with law.

7. With the aforesaid observations, this writ petition is dismissed without any order as to costs.

8. In view of the aforesaid order, nothing survives for consideration in the interim application. The same also stands dismissed.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)