IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9626 OF 2021

Moiz Yusuf Plumber ….Petitioner

V/s.

Shilpa M Rajput & Ors. …Respondents

Mr. V. K. Dhawane i/b Mr. V. N. Mali for Petitioner.
Mr. Nainesh Amin i/b N.N. Amin & Co. for Respondent Nos.2 & 5
Mr. Bhavesh Magam i/b Mr. Rajesh More for Respondent No.1.
Mrs. S. D. Vyas GP, "B" Panel for State.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 19th AUGUST 2022

P.C. :

1 On 3rd August 2022 nobody had appeared for petitioner and the matter was stood over to 12th August 2022. On 12th August 2022, at the request of Mr. Dhawane that his senior Mr. Mali was unwell, the matter was stood over to today. The order passed on 12th August 2022 is "At the request of Mr. Dhawane, stand over to 19/08/2022 as a last chance". Today again Mr. Dhawane is not ready to argue the matter saying that Mr. Mali is unwell and is advised four weeks bed rest. We had made it clear to Mr. Dhawane on 12th August 2022 that he should be prepared to go on with the matter today if Mr. Mali was not available. Mr. Dhawane is not ready to argue the matter.

2 We have considered the petition with the assistance of Mr. Amin and Mr. More.

3 Petitioner is impugning an order dated 21st December 2020 passed by

the District Magistrate, Alibag on an application filed by respondent no.2 under Section 14(1) of the SARFAESI Act. According to petitioner, respondent no.1 had executed an agreement of loan cum hypothecation dated 12th August 2018 with reference to Flat No.C-3, Kasturi 1 CHS, Plot No.453, Panvel (the said flat). As per the said loan cum hypothecation agreement, respondent no.2 had sanctioned various credit facilities to respondent no.1. It is also averred in the petition that respondent no.1 had created equitable mortgage of the said flat in favour of respondent no.2 and even the title deed in respect thereof has been deposited with respondent no.2 with an intention to secure the credit facility. It is alleged that respondent no.1 has failed to repay the loan / outstanding amount. Respondent no.2 in view thereof, has taken steps under Section 13 of the SARFAESI Act. It is petitioner’s case that petitioner was not heard and petitioner should have been heard because the said flat was owned and possessed by petitioner.

4 In our view, petitioner should take out an application under Section 17 of the SARFAESI Act and move the proper Debt Recovery Tribunal.

5 Petition dismissed.

6 We clarify that we have not made any observation on the merits of the matter. All rights and contentions of petitioner are kept open.

(A. S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**