

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

WRIT PETITION NO. 218 OF 2022

Anand Rathi Global Finance Ltd. ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Charles De'Souza a/w Mr. Nikhil Rajani a/w Ms.
Apoorva Kulkarni i/b V. Deshpande and Co. for the
Petitioner.

Mr. P. P. Kakade, GP a/w Mrs. Reena A. Salunkhe, AGP for
the Respondent -State.

**CORAM: DIPANKAR DATTA, CJ &
 V. G. BISHT, J.**

DATE: February 2, 2022

PC:-

1. The principal relief claimed in the writ petition reads
as follows:

*"(a) this Hon'ble Court be pleased to issue a Writ of
Mandamus or any other Writ of the like nature
thereby directing the Respondent No.2 to forthwith
and or within such time as this Court may deem fit
and proper to execute and implement order dated
09.09.2019 passed by the Respondent No.1 under
Section 14 of SARFAESI Act in an application being
Application No. 702 of 2019".*

2. Taking cognizance of the grievance expressed by the
petitioner in this writ petition, a coordinate Bench of this
Court, by its order dated January 12, 2022, called for a
short affidavit from the respondents requiring them to

place on record the steps that have been taken since the order under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act", for short) was passed by the District Magistrate, Thane. A reply affidavit has been filed.

3. A reply affidavit has been filed. It appears from page no. 80-A of the paper book that the Tahsildar-cum-Executive Magistrate, Thane, by his communication dated January 6, 2022 has requested the concerned Deputy Commissioner of Police to provide two police constables and two women employees on March 3, 2022 at 11.30 am for facilitating delivery of possession of the secured asset in favour of the petitioner.

4. Responding to our query, Mr. Kakade, learned Government Pleader appearing for the State states that the Tahsildar-cum-Executive Magistrate, Thane shall not be personally present at the site when possession is delivered to the petitioner; instead, the Tahsildar-cum-Executive Magistrate, Thane shall appoint the Nayab Tahasildar for taking over possession of the secured asset and for delivering it to the petitioner.

5. Sub-sections (1) and (1-A) of section 14 the SARFAESI Act read as follows:

"14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.- (1) Where the possession of any secured asset is required to be

taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

- (a) take possession of such asset and documents relating thereto;
- (b) ***.

(1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him, —

- (i) to take possession of such assets and documents relating thereto; and
- (ii) to forward such assets and documents to the secured creditor."

6. The statutory mandate is that the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can himself take possession of the secured asset; in the alternative, the concerned magistrate can appoint any officer subordinate to him to take possession.

7. In view of such mandate of the statute and having regard to the fact that the District Magistrate, Thane in the present case by his order under section 14 of the SARFAESI Act appointed the Tahsildar-cum-Executive

Magistrate, Thane to take possession of the secured asset, it is the said tahsildar-cum-executive magistrate and no one else who would have the authority to take possession. Having regard to the maxim *delegatus non potest delegare*, the Tahsildar-cum-Executive Magistrate, Thane cannot appoint any officer subordinate to him for the purpose of taking possession.

7. We, accordingly, direct the Tahsildar-cum-Executive Magistrate, Thane to remain personally present at the site of the secured asset on March 3, 2022 at 11.30 a.m. and take all such steps that are necessary for the purpose of taking possession of the secured asset and delivering possession thereof to the petitioner's authorized officer. If the Tahsildar-cum-Executive Magistrate, Thane is otherwise busy and not in a position to take possession in terms of the order under section 14 of the SARFAESI Act, the District Magistrate, Thane shall perform the duty of taking possession in terms of his own order whereafter delivery of possession be made over to the petitioner.

8. This writ petition, accordingly, stands disposed of. There shall be no order as to costs.

(V.G. BISHT, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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