IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1694 OF 2022.

Bank of Baroda. … Petitioner.

VERSUS

State of Maharashtra
and another. … Respondents.

Mr.S.N.Fuladi, Advocate for the Petitioner.
Mr.A.A.Madiwale, A.G.P. for Respondents.

CORAM : NITIN JAMDAR AND ANIL L. PANSARE, JJ.

DATE : 5 MAY 2022.

P.C.

Heard learned Counsel for the parties.

2. On 26 April 2022, following order was passed :

" This Petition is filed for a simpliciter direction to the Respondent No.2- Tahsildar, Nagpur to implement the order dated 18 May 2018 passed by the Respondent No.1- Additional District Magistrate, Nagpur, under Section 14(2) of the Securitisation &

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 (for short, " the SARFAESI Act"). A reply, which is more than fifty pages including annexures, is filed by the Tahsildar, wherein various facts have been mentioned.

2. In the reply, the Tahsildar has stated about the steps taken by the borrowers. It is inter alia stated that the borrower has approached the Bank for O.T.S. proposal and that the Petitioner-Bank has suppressed certain facts.

3. Even assuming that there was a delay in the implementation of the order, still there is no explanation for delay of four years. What is surprising is that how the Tahsildar has stated the facts which would be within the knowledge of the borrower and the Bank. The learned Counsel for the Petitioner-Bank has pointed out that the Tahsildar could have no reason to know about these facts, such as O.T.S. proposal, etc., and makes a grievance that the Tahsildar has acted in the interest of the borrower. We are not satisfied with the reply given by the Tahsildar. Prima facie, there appears to be substance in the allegation of the Bank that there is an attempt to putforth the case of the borrower.

4. The Tahsildar would explain this position on 5 May 2022.

5. Stand over to 5 May 2022."

3. Learned A.G.P. states that the Tahsildar is present in the Court and tenders an affidavit. As regards what is stated in the order, an un-conditional apology is being tendered. The

subsequent paragraphs states about the action which is sought to be taken.

4. That the action under Section 14(2) of the Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 (for short, "the SARFAESI Act") will have to be taken as per law, is undisputed and that action must follow. What is worrying is the perception and stand of the Tahsildar regarding the existence of powers under Section 14 of the SARFAESI Act. In series of petitions we have noted that the action under Section 14 of the SARFAESI Act to recover the secured creditors' debt were not taken promptly, therefore, we have to refer the matter to the Secretary, (Home) who has taken cognizance and the State Government has issued guidelines. Since the cognizance is by the Secretary, (Home)we direct the Registry to send copy of this order to the Secretary who can look into the issue and take necessary action and forward the same to the concerned authority, if so warranted.

5. As regards the action under Section of the SARFAESI Act, the affidavit states that the implementation will be done as per law within a period of two weeks. This direction is not to be construed as commenting upon the right of the borrower, as the borrower has a remedy to approach the appropriate Court of law for redressal of its grievance.

7. Writ Petition is accordingly disposed of.

8. Copy of this order be forwarded to the Secretary (Home), State of Maharashtra wherein the conduct of the Tahsildar is highlighted.

(ANIL L. PANSARE, J) (NITIN JAMDAR, J)