IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1569 OF 2020

Manjusha W/o Vijay Ghule
Aged 50 years, Occ. Household,
R/o. Wadsa, Desaiganj
Dist. Gadchiroli. ... Petitioner

- Versus -

1) The Authorised Officer,
Akola Urban Co-operative Bank Ltd.,
Murtizapur road Akola,
branch at Nagpur.

2) Union of India,
Through, Ministry of Finance
New Delhi.

3) Kisan Lilaram Nagdive,
Aged about 56 years, Occ. Business,
R/o. Jawahar Ward, Desaiganj,
District Gadchiroli.

4) Govind Lilaram Nagdive,
Aged about 45 years, Occ. Business,
R/o. F-104, Sai Lalita Apartment No.3
New Colony, Nagpur, District Nagpur.

5) Mukund Trambak Pande,
Aged Major, Occ. Service,
R/o. C/o. Akola Urban Co.op. Bank
Ltd. Sitabuldi Branch,
Pandit Malviya Road, Sagar Towers,
Sitabuldi, Nagpur. ... Respondents

Mr. R. K. Thakkar, Advocate for Petitioner.
Mr. A. S. Agrawal, Advocate for Respondent No.1.
Mr. M. Anilkumar, Advocate for Respondent Nos.3 & 4.

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

DATE : 16 MARCH 2022

P.C. :

Heard learned counsel for the parties.

2. The Petition is filed by the borrower seeking to question the notice issued by the Respondent Bank - the secured creditor under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the "SARFAESI Act"). The Petitioner also sought to challenge the auction held.

3. The learned Counsel for the Petitioner submitted that the Petition be entertained in light of the special facts and

circumstances of the case such as during the lock-down the auction was held.

4. The learned Counsel for the Respondents drew our attention to the decisions of the Hon'ble Supreme Court in the cases of *Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank and Others*[1] and *United Bank of India Vs. Satyawati Tondon & Others.*[2]*,* contending that when the remedy is available before the Debt Recovery Tribunal under the SARFAESI Act, the writ jurisdiction should not be invoked.

5. We find no impediment for the Petitioner to urge before the Debt Recovery Tribunal what is urged in this Petition and, therefore, following the law laid down by the Hon'ble Apex Court in these decisions, decline to proceed further in writ jurisdiction.

6. This Writ Petition was filed in April 2020 when regular functioning of this Court was affected and therefore the Petition was entertained by the learned Single Judge, who at that time considering the situation had protected the Petitioner. Now since regular functioning of the Debt Recovery Tribunal is resumed, the Petitioner can move the Debt Recovery Tribunal. Considering these facts, the request made by the learned Counsel

1 2017 Law Suit (SC) 1210
2 2010 8 SCC 110

for the Petitioner to continue the interim order for a period of four weeks is reasonable.

7. Accordingly Writ Petition is disposed of keeping all contentions of the parties open.

8. We make it clear that the interim order granted by this Court will come to an end upon expiry of four weeks from today. Further order as regards grant or refusal of the interim relief will be considered by the Debt Recovery Tribunal on its own merits, without being influenced by either grant or continuation of interim relief by this Court.

9. The Respondents contend that the interim order granted by this Court in this Petition on 3 April 2020 directing that the possession of the Petitioner be protected is on the premise that the Petitioner is in possession and at that time the Respondents were not represented. It is the contention of the Respondents that the Petitioner is not in possession but the Respondent No.1 Bank is in possession. This contravercy is left to the Tribunal to consider when the Tribunal takes up the application of the Petitioner for interim relief.

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

Kirtak