IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4755 OF 2023
IN WRIT PETITION/1259/2023

Veer Gurjar Aluminimum Industries Pvt. Limited, Company Incorporated under the Companies Act, 1956, Through Mr. Balulal Vardaji Gurjar, Age 59 years, Occ. Business, having office at Plot No. K-250/2, Ceat Road, MIDC Waluj, Aurangabad 431133 ... **Applicant**

VERSUS

1) J. M. Financial Asset Reconstruction Company Limited, Company Incorporated under the Companies Act, 1956 and registered under section 3, of the SARFAESI Act, 2002 and acting in its capacity as Trustee of "JMFARC-Corp I-2013 Trust" having its Registered Office, at 7th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400025.

2) The State of Maharashtra Through the Collector, Aurangabad, District Aurangabad.
3) The District Magistrate and District Collector, Aurangabad Dist. Aurangabad
4) The Tahsildar, Gangapur, Tq. Gangapur, Dist. Aurangabad.
5) The Circle Officer, Waluj, Tq. Gangapur, District Aurangabad.
6) The Talathi Ranjangaon Shen./Jikthan Tq. Gangapur, Dist. Aurangabad ... **Respondents.**

...

Advocates for the Applicant : Mr. R.F. Totala i/b Mr. Swapnil Lohiya and Mr. Virendra Kumar
Advocates for the Respondent No. 1 : Mr. P.R. Katneshwarkar i/b Mr. Atul A. Mishra and Mr. Yogesh B. Bolkar
A.G.P. for the Respondent Nos. 2 to 6 : Mr. S.G. Sangale

CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 19.07.2023
PRONOUNCED ON : 24.07.2023

PER COURT :

Heard learned advocate for the petitioner Mr. Totala for the applicant, learned advocate Mr. Katneshwarkar h/f Mr. Bolkar for the respondent No. 1 and the learned A.G.P.

2. The respondent No. 1 (hereinafter the petitioner) filed Writ Petition No. 1259/2023 arraying the respondent Nos. 2 to 6 herein who are the State of Maharashtra, the District Magistrate, Tahsildar and other revenue officers, aggrieved by the fact that the order passed by the respondent No.2 District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter 'SARFAESI Act') obtained by it was attempted to be executed by the respondent No. 4-Tahsildar through his subordinates. The applicant who is a borrower was not arrayed as a respondent. By the order dated 01.02.2023, the writ petition was allowed and the respondent No. 4-Tahsildar was directed to execute the order passed under Section 14 of the Act himself and expeditiously, in the light of the view taken by this Court in the matter of **Punjab National Bank Vs. State of Maharashtra, Writ Petition (Stamp) No. 26048/2019 by the order dated 12.12.2019**.

3. By way of this Application the borrower is seeking to recall our order in Writ Petition No. 1259/2023 dated 01.02.2023 on following grounds :

> (a) The borrower had already preferred Securitization Application No. 158/2021 and Original Application No. 172/2013 against the petitioner but the fact was not disclosed in the writ petition. It had already *inter alia* disputed executability of the order passed under Section 14 by the Tahsildar through his subordinates. The petitioner had also filed Transfer Application No. 5/2022 and two

miscellaneous applications before the Debts Recovery Appellate Tribunal (DRAT).

(b) A false statement was made in paragraph No. 12 of the petition declaring that the petitioner had not filed any other proceeding touching the subject matter of the writ petition.

4. The learned advocate Mr. Totala for the applicant-borrower would submit that it is not intending to seek a review of the order. It is seeking to recall the order. There is a distinction between the two as explained in the matter of **Asit Kumar Kar Vs. State of West Bengal and others; (2009) 2 Supreme Court Cases 703**.

5. Mr. Totala would then take us through the orders passed by the Presiding Officer of the Debts Recovery Tribunal, Aurangabad (DRT) in S.A. No. 158/2021 and O.A. No. 172/2013 and demonstrated that the dispute as to the attempt to execute the order passed under Section 14 of the SARFAESI Act, instead by the Tahsildar himself, through his subordinates was directly involved, debated, argued and was pending adjudication. The petitioner was aware about it since it appearing and contesting those proceedings before the DRT Aurangabad. It was unbecoming of a litigant not to disclose such material fact. Had that fact been disclosed, this Court would not have entertained the writ petition under Article 226 of the Constitution of India. The order was obtained by this Court mischievously and was a sheer abuse of the process.

6. The learned advocate Mr. Katneshwarkar by referring to the affidavit in reply would submit that by way of this application the applicant is seeking review in disguise. This Court cannot undertake a review. The limitation period prescribed for seeking a review had also expired. There is no application seeking condonation of the delay and the application is not maintainable.

7. Mr. Katneshwarkar would further submit that a limited relief on the basis of settled position of law was being sought in the writ petition. The order passed under Section 14 of the SARFAESI Act was being executed by Tahsildar through his subordinates when he himself was a delegate of the District Magistrate and should have executed that. In view of such settled legal position, this Court by the order dated 01.02.2023 merely directed the Tahsildar to execute the order himself. The order was innocuous.

8. Mr. Katneshwarkar would then submit that since the Tahsildar was not taking steps in spite of passing of the order under Section 14 of the SARFAESI Act long back, the petitioner had approached this Court and solicited the innocuous order. It is not the case of suppression of material fact. This court would have passed same order even if the applicant was made a party and had appeared in the writ petition. Even thereafter the DRT has rejected the petitioner's application and permitted the possession to be taken expressly mentioning that it would be subject to the decision in the S.A. No. 158/2021.

9. We have carefully gone through the papers and considered the rival submissions. So far as the legal aspect is concerned, the order sought to be recalled, in our considered view, did not in any sense adjudicate anything. No rights much less in dispute between the petitioner on the one hand and the applicant-borrower on the other was *seisine.* The order passed under Section 14 of the SARFAESI Act by the District Magistrate was under execution. The Tahsildar who was himself a delegate of the District Magistrate had delegated the powers to his subordinates and we had merely directed him to execute the order himself in the light of the settled legal position and the judgment in the matter of **Punjab National Bank (supra**). No other issue was involved. A writ of mandamus was being sought only against the Tahsildar and presence of the applicant in the Writ Petition was not necessary. The relief sought therein could have been granted even in its absence.

10. Again, even if the applicant would have been a party to that writ petition, in the light of the prayers made therein, no other issue would have been relevant for the decision of the writ petition. Therefore, its presence in the writ petition would have been redundant.

11. As far as the nature of the present application whether it is an application seeking recalling of the order in the light of the observations in the matter of **Asit Kumar Kar (supra**) or is a review application is a fact which, in our considered view, need not bother us. *Ex facie*, the applicant-borrower is attempting to demonstrate that the petitioner has obtained the order of this Court by not disclosing material facts and circumstances and if the allegations sustain it would be bordering fraud which vitiates everything and can be gone into even in a collateral proceeding. Therefore, it cannot be said that the application itself is not maintainable as is being submitted by Mr. Katneshwarkar.

12. As far as the submission of the learned advocate Mr. Totala adverting our attention to paragraph No. 12 of the writ petition is concerned, it merely declared that the petitioner had not preferred any proceeding touching the subject matter of the writ petition in any other Court of law. Admittedly, the S.A. No. 158/2021 and O.A. No. 172/2013 were the the proceedings which were not filed by the petitioner. The declaration was regarding the petitioner having not filed any proceeding. The S.A. No. 158/2021 and O.A. No. 172/2023 are the proceedings initiated by the applicant-borrower and in that view of the matter it cannot be said that the declaration contained in paragraph No. 12 of the petition was factually incorrect.

13. However, irrespective of the aforementioned observations, it is a matter of record that the dispute as to the executability of the order under Section 14 of the SARFAESI Act by the subordinates of Tahsildar when he himself was a delegate of the District Magistrate was one of the issues that was being agitated by the applicant and contested by the petitioner in S.A.

No. 158/2021 and connected matters. These matters were going on before the DRT and the orders were being passed from time to time since 17.01.2022. It is apparent that atleast since 21 March 2022 the petitioner was appearing before the DRT Aurangabad. As can be seen from the order-sheet dated 23.08.2022, submissions were made by both the sides touching the aspect *inter alia* regarding executability of the order under Section 14 of the SARFAESI Act by the subordinates of the Tahsildar.

14. If such was the state of affairs, a *bona fide* litigant would have certainly disclosed such fact to this Court while filing the writ petition which the petitioner has failed. Being a financial institution and not a layman it could have certainly come out with disclosure of this fact even if it was not so relevant according to it. This circumstance, in our considered view, may not strictly constitute fraud in view of our earlier observations about our order being innocuous and having been passed in accordance with the settled principles of law and when presence of the applicant-borrower was not necessary for the adjudication. However, it is certainly a mischievous conduct, which does not befit the petitioner which is a financial institution. It is certainly an abuse of the process of the Court, it may be that it would not go to the root of the sustainability and legality of the order passed by us.

15. In view of such peculiar state of affairs, though we are not inclined to allow the application, we still cannot desist from imposing heavy costs on the petitioner.

16. The Application is rejected. However the petitioner shall deposit costs of Rs. 1,00,000/- (Rs. One Lac only) in this Court within four weeks.

(S.G. CHAPALGAONKAR, J.) **(MANGESH S. PATIL, J.)**

mkd/-