IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1422 OF 2023

Airpac Filters and Systems Private)
Limited and Another)...Petitioners
V/s.
The State of Maharashtra and Ors.)...Respondents

Mr. Bhavin Gada a/w. Ms. Lavita Avhadi/b. Ms. Pratibha Mehta, Advocate for the Petitioners.
Mrs. Shruti D. Vyas "B" Panel Counsel for the Respondent-State.
Mr. Harinder Toor a/w. Mr. Zulfiq Multani, Mr. Nainesh Amin for N.N.Amin & Co., Advocate for the Respondent No.3.
Mr. Abhinav Chandrachud a/w. Mr. Akash Agarwal i/b. AMR Law LLP, Advocate for the Respondents No.4 to 8.
Advocate for the Respondent.

CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE : 29 MARCH 2023

P.C.

The Petitioner has challenged the order / communication issued by the District Magistrate, Palghar dated 6 December

2022 to the Tahsildar, Vasai, with a copy to the Respondent – bank, the secured creditor. The main contention of the Petitioner is that this communication issued by the District Magistrate is beyond his jurisdiction and even on merits, the ground on which the communication is issued is not sustainable in law.

2 The Respondents no.4 to 8 are the borrowers and the Respondent no.3–secured creditor– bank. The Respondent no.3 had sanctioned certain credit facility to the Respondents No.4 to 8 – the borrowers and an equitable mortgage was created. Respondent no.3 initiated proceedings under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) against the Respondents no.4 to 8 on 20 October 2016. In January 2017, Respondent no.3-bank took symbolic possession of the mortgaged property. The Respondent no.3 also filed a Securitisation Application No. 13 of 2017 under Section 14 of the SARFAESI Act before the District Magistrate, Palghar and an order was passed on 11 January 2019 directing possession to be taken of Plot No.22 on Survey No.93 at Vasai.

3 The Respondent no.3, thereafter, issued an E-Auction notice on 17 September 2022, pursuant to which Petitioner participated in the auction and was declared highest bidder in the auction held on 20 October 2022. The Petitioner paid the full sale consideration. The Respondents no.4 to 8 filed an Interim Application to challenge the E-auction and sought for stay. By order dated 26 October 2022, the Interim Application was dismissed by Debt Recovery Tribunal-III. Thereafter, the Respondents no.4 to 8 filed an application before the learned Magistrate seeking to suspend the order issued by the District Magistrate on 11 January 2019 on the ground that the Respondent no.4 has approached the National Company Law Tribunal (NCLT) and moratorium has come into effect since 12 November 2022. Upon this application, impugned communication is issued by the District Magistrate, Palghar to Tahsildar on 6 December 2022 and further communication by Tahsildar to certain official on 12 December 2020.

4 We have heard Mr. Bhavin Gada, learned Counsel for the Petitioner, Mrs. Shruti D. Vyas, learned Counsel for the Respondent-State, Mr. Harinder Toor, learned Counsel for the Respondent no.3 and Mr. Abhinav Chandrachud, learned Counsel for the Respondents no.4 to 8.

5 As stated earlier, the contention of the Petitioner is two-fold as to whether moratorium applies to the facts of the present case is not an issue which the District Magistrate could not have gone into and even otherwise going by the case of the Respondents no.4 to 8, there is no merit in the contention that because of the moratorium, no auction under the SARFAESI Act be taken against the Respondents no.4 to 8 in this case. The learned Counsel for the Petitioner also contended that the Petitioner has invested substantial amount and has been issued a Sale Certificate and therefore such order / communication gravely prejudices the Petitioner.

6 The learned Counsel for the State contends that the document dated 6 December 2022 is only a communication and it is not an order under the SARFAESI Act. According to the learned Counsel for the Respondents no.4 to 8, the moratorium had come into effect and therefore, by operation of law, the proceedings pursuant to the order passed by the District Magistrate earlier, could not have continued. The learned Counsel for the Respondent-bank had supported the Petitioner and he also contends that the District Magistrate would have no jurisdiction to review his earlier order passed under Section 14 of the SARFAESI Act.

7 We have to keep in mind that the proceedings have come before us in writ jurisdiction from the communication / order issued by the District Magistrate. It is a settled position that the power vested in the District Magistrate under Section 14 of the SARFAESI Act is not a quasi-judicial power. As regards the exercise of quasi-judicial / judicial power to decide the implications of the contentions of the Respondents no.4 to 8 based on moratorium, the appropriate forum ought to have been the DRT where the Respondents no.4 to 8 have already filed proceedings. Instead of applying for any relief in the pending proceedings before the DRT, Respondents no.4 to 8 have approached the District Magistrate. Once substantial proceedings were initiated in DRT, the dispute, if any, governing the relationship between the parties should have been agitated before the DRT. Though the learned Counsel for the State contends that the document dated 6 December 2022 is not an order but only a communication, the effect of the same is directly on the rights of the parties who are agitating their dispute in the DRT.

8 In these circumstances, we find that the District Magistrate ought to have directed the Respondents no.4 to 8 to approach the DRT to seek appropriate orders and not exercise the power, which we find is not traceable under any

provisions under the SARFAESI Act. In light thereof, we are inclined to set aside the order of the District Magistrate dated 6 December 2022 and consequently, communication dated 12 December 2022.

9 The learned Counsel for the Respondents no.4 to 8 submits that Respondents no.4 to 8 will apply in the proceedings pending before the DRT. However, some breathing time may be given as the Respondents no.4 to 8 are likely to lose physical possession of the property.

10 Having considered the position that appropriate forum to consider the issue on merits is DRT and Respondents no.4 to 8 seek to avail of that remedy on one hand, and that the Petitioner is a successful auction purchaser with Sale Certificate on the other, though we are inclined to give some time, we are not inclined to grant more than ten working days to the Respondents no.4 to 8. In these ten working days, it is open to the Respondents no.4 to 8 to seek such relief as may be permissible in law. Respondents no.2 and 3 will not take the physical possession of the property in question from Respondents no.4 to 8 for the abovementioned period of ten working days.

11 The Respondents no.4 to 8 corresponding will not create any third party rights during this period of protection.

12 We make it clear that we have not considered the merits of the rival contentions and they are kept open, if and when the Respondents no.4 to 8 make an application in the DRT. The Respondents no.4 to 8 would join the Petitioner as a party Respondent in the application.

13 If such an application is made by the Respondents no.4 to 8, the DRT will make an endeavour to decide the same within a period of two weeks on its own merits.

14 Accordingly, the impugned order / communication issued by the District Magistrate, Palghar dated 6 December 2022 is quashed and set aside.

15 Writ Petition stands disposed of in the above terms.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**

ARTI VILAS KHATATE

Digitally signed by ARTI VILAS KHATATE Date: 2023.03.29 18:18:06 +0530