

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

**WRIT PETITION NO. 1243 OF 2023
WITH
INTERIM APPLICATION NO. 831 OF 2023**

Akshay R. Padliya & Ors.

... Petitioners

versus

Pegasus Assets Reconstruction Private
Limited & Anr.

... Respondents

.....

Mr. Devul Dighe with Mr. Pratap Sampat and Ms. Aarti Suvarna for
the Petitioners.

Dr. Abhinav Chandrachud with Mr. Mayank Samuel i/b. Sirius Legal
for Respondent No.1.

Ms. S.D. Vyas, 'B' Panel Counsel for the State.

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**CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.**

DATE : 30 JANUARY 2023

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioners have sought to question action taken by the Metropolitan Magistrate, Mumbai under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 upon an application of Respondent No.1.

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3. The learned Counsel for the Respondents raises preliminary objection regarding entertainability of the petition in light of remedy to approach Debt Recovery Tribunal available to the Petitioner. The learned Counsel for the Petitioners seeks to contend that since the matter is subjudiced before the National Company Law Tribunal and the Insolvency & Bankruptcy Code supersedes the SARFAESI Act of 2002 a question of law arises, therefore the petition should be entertained.

4. However, it is settled that remedy against the action taken by the secured creditor under section 14 of the SARFAESI Act of 2002 is with the DRT. Nothing is shown to us as to why the Petitioners cannot raise the question sought to be urged, before the DRT. It is for the DRT to rule upon the question. Needless to state that, if the decision on the issue raised is against the Petitioners, the Petitioners would have their remedy available in law.

5. The learned Counsel for the Petitioners states that the Petitioners will approach the DRT but some protection be given to the Petitioners in the meanwhile. He states that children of the Petitioner No.1 residing in flat no. 73 and Petitioner No. 3 presently residing in flat no. 95 are undergoing examination, and the notice issued to the Petitioners states that the physical possession would be taken on 1 February 2023. Having considered the facts and

circumstances, as regards these two flats are concerned, the date given for taking possession is rescheduled to 6 February 2023.

6. Keeping all contentions of the parties open, the writ petition and the interim application are disposed of.

ABHAY AHUJA, J.

NITIN JAMDAR, J.