IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1279 OF 2017

Nathuram Daji Jadhav and Anr. …. Petitioners
vs.
City Financial Consumer Finance
India Ltd & Anr. … Respondents

Mr. Akhilesh S. Dubey with Mr. Rajuram Kuleriya i/b Law Counsellors for the Petitioners.
Mr. Devesh Sawant with Mr. Vivek Patil i/b Vivek Patil and Associates for Respondent No.3.
Mr. Sanjay Anbhavane for Respondent No.2.

CORAM : NITIN JAMDAR AND ABHAY AHUJA, JJ.
DATE : 21 MARCH 2023

P.C. :

. On 17 March 2023 after hearing the parties at length we had passed the following order:-

> “. *Heard the learned Counsel for the parties.*
>
> *2 The learned Counsel for the Respondents have relied upon decision of the Division Bench of this Court in the case of Poorti Rent a Car and Logistics Pvt. Ltd. & Ors. vs. Kotak Mahindra Bank Ltd. & Ors. to contend that the issue raised by the Petitioners in respect of validity of assignment in favour of Respondent no.2 by Respondent no.1 stands squarely answered.*
>
> *3 The learned Counsel for the Petitioners sought to contend that in the decision of Poorti Rent a Car and*

Logistics Pvt. Ltd. & Ors. vs. Kotak Mahindra Bank Ltd. & Ors. (supra) the factual position was that a non-banking financial institution which was not a secured creditor as defined under section 2(zd) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the "SARFAESI Act") had assigned its interest to a bank which was admittedly a secured creditor under the said definition and that the said bank – a secured creditor had subsequently taken action under the SARFAESI Act. The learned Counsel for the Petitioners submits that it was because the assignee was already recognized as a secured creditor as per section 2(zd) that this Court had permitted such secured creditor to take action under the SARFAESI Act. The learned Counsel for the Petitioner sought to contend that, however, in the present case both the Respondent no.1, a non-banking financial company and the Respondent no.2 an asset reconstruction company did not fall within the definition of the secured creditor under section 2(zd) and the concept of asset reconstruction company itself was recognized by virtue of a Amendment Act 44 of 2016 with effect from 1 September 2016 and the said position is clear from Section 5 of the SARFAESI Act. The learned Counsel submits that, therefore, the Respondent no.2 could not have taken steps under the SARFAESI Act prior to 1 September 2016 which in this case it has admittedly done.

4 The learned Counsel for the Respondent no.2 submitted that Petitioners are raising this issue that Respondent no.2 is not a secured creditor in oral argument and both, on facts and law, this proposition is not correct. He submits that Respondent no.2 was a reconstruction company, which is a concept recognized under the SARFAESI Act even prior to 1 September 2016 and had registered as a reconstruction company which was included in the definition of secured creditor under section 2(zd)(ii) and all that has taken place is a nomenclature of

> *reconstruction company is changed to asset reconstruction company and therefore there is no merit in the challenge. He states that he will place the Registration Certificate of the Respondent no.2 on record. For that purpose, hearing of this Petition is deferred to 21 March 2023. To be listed under the caption "Bottom of Board"."*

2 Learned Counsel for Respondent No.2 has placed on record certificate of registration evidencing that Respondent no.2-Phoenix ARC Private Limited was granted certificate of registration to commence the business of securitisation or assets reconstruction under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 20 June 2008. The certificate of registration tendered in the Court is taken on record and marked 'X' for identification.

3 That being the position we do not find that there is any merit in the contentions raised by the Petitioner, which we have already dealt with in the order dated 17 March 2023. We, therefore, hold that the question raised by the Petitioner is covered by the Division Bench of this Court in case of *Poorti Rent a Car and Logistics Pvt Ltd and Ors Vs. Kotak Mahindra Bank Ltd. and Ors.*[1]. There is therefore no merit in the petition.

4 Accordingly, writ petition is rejected

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

1 Writ Petition No. 11371 of 2014 dated 24 February 2022