

Prajakta Vartak

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

WRIT PETITION NO. 1510 OF 2004

M/s. Venus Opticians

..Petitioner

Vs.

The Nashik Road Deolali Vyapari

Co-op. Bank Ltd. & Anr.

..Respondents

Mr. Siddhesh Pilankar i/b. Mr. Uday Warunjikar for the Petitioner.

Ms. Rukmini Khairnar i/b. Mr. P. N. Joshi for Respondent No.1.

Mr. D. P. Singh i/b. Mr. A. A. Ansari for Respondent No.2.

**CORAM : G. S. KULKARNI &
RAJESH S. PATIL, JJ.**

DATE : JUNE 16, 2023

P.C.:

1. This petition is filed praying for the following reliefs:-

“a) Be pleased to hold and declare that the provisions of the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are ultra virus to the provisions of the Constitution of India and be pleased to struck down the same.

b) As a consequential relief, this Honourable Court be pleased to issue writ of certiorari, or any other appropriate writ, order or direction be issued quashing and setting aside the said notice dated 22-12-2003 for the reasons disclosed in this Petition.

c) During the pendency of the above referred Petition, be pleased to restrain the Respondents herein from taking any further action on the basis of the provisions of the said Act of The Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 and more particularly the notice dated 22.12.2003.

d) Ad interim relief in terms of prayer clause (c) be passed.”

2. On the earlier occasion, Mr. Singh, learned counsel for Union of India has pointed out that the issue is no more *res integra* as it now stands covered by the decision of the Supreme Court in ***Mardia Chemicals Ltd. and Ors. Vs. Union of India and Ors.***¹. in which the effect of the provisions of Section 13 of the SARFAESI Act has been upheld by the Supreme Court. In this view of the matter, on 09 June, 2023, we had passed the following order:-

“1. None appeared for the petitioner when the matter was called out. Hence, the matter was kept back to be called out in the second session. If the petitioner on the second call is not represented, it would be required to be presumed that the appellant is not interested to prosecute this petition and the petition would be required to be dismissed for want of prosecution.

2. Keep back at 2.30 p.m.

3. In the second session, when the matter was called out, at the request of Dr. Warunjikar, stand over to 16th June, 2023. From the prayers it is clearly seen that the issue is already decided by the Hon’ble Supreme Court. The challenge to Section 13 of the SARFESI Act is already taken up by the Hon’ble Supreme Court in case of *Mardia Chemicals Ltd. Vs. Union of India and Ors.* [2004(3) SCC 243]. In fact, the prayers do not survive. However, at the request of Dr. Warunjikar, stand over to 16th June, 2023, to be shown Part Heard, ‘High on Board’.”

3. Today, Mr. Pilankar, learned advocate appears for the petitioner. He states that he is not in a position to obtain further instructions. He would

1 2004(3) SCC 243

also not dispute that the issue would now stand covered by the decision of the Supreme Court in *Mardia Chemicals Ltd. and Ors. Vs. Union of India and Ors.* (supra). In this view of the matter, we are of the opinion that the issue stands concluded. The petition is accordingly disposed of as infructuous. No costs.

[RAJESH S. PATIL, J.]

[G. S. KULKARNI, J.]