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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

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WRIT PETITION NO.3351 OF 2023

	Kotak Mahindra Bank Limited, A Banking Company incorporation and governed by the Companies Act, 1956 and carrying on Banking Business under the Banking Regulation Act, 1949 and having its Registered & Corporate Office, at 27, BKC, C/27, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 and having branch address at 5 th floor, Adamas Plaza, CST Road, Kalina, Santacruz East, Mumbai – 400 098. through its Authorized Representative Mr.Shantanu Nayse.	...Petitioner
	Versus....	
1.	The State of Maharashtra, Through the District Magistrate, Pune.	
2.	The Tahsildar / Office of Executive Magistrate, Home Department, Pune, “B” Wing, 4 th Floor, New Collector Office Building, Station Road, Opposite Sasoon Hospital Pune – 411 001.	
3.	The Resident Nayab Tahsildar Pune City, NH4, 76/10, Shukrawar Peth, Mahatma Gandhi Road, Sukhrawar Peth, Pune – 411 002.	...Respondents

Mr.Prathamesh Kamat with Mr.Apoorva Kulkarni i/b V. Deshpande & Co. for the Petitioner.

Ms.Shruti D. Vyas, “B” Panel Counsel for the Respondent – State.

**CORAM : G.S. KULKARNI &
RAJESH S. PATIL, JJ.**
RESERVED ON : 13TH JUNE, 2023
PRONOUNCED ON : 30TH AUGUST, 2023

1/21

The Judgment is corrected as per speaking to the minutes of the order dated 10.10.2023

JUDGMENT : (Per Rajesh S. Patil, J.) :

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. This Writ Petition filed under Article 226 of the Constitution of India has prayed for the following reliefs :-

“(a) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ of the like nature thereby directing the Respondent No.2 and 3 to forthwith and or within such time as this Court may deem fit and proper to execute and implement order dated 12.01.2021 passed by the Respondent No.1 under Section 14 of SARFAESI Act in an Application being Application No. 978 of 2020.

(a1) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ of the like nature thereby quashing or setting aside the impugned letter/communication dated 17.11.2022 directing that the possession of the secured asset cannot be taken until appropriate orders are passed in Civil Suit filed by Petitioner in District Court Pune being Civil Suit No. 1436 of 2015.

(b) This Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ of the like nature thereby directing the Respondent No.2 and 3 to forthwith and or within such time as this Court may deem fit and proper to execute and implement order dated 12.01.2021 passed by the Respondent No.1 under Section 14 of SARFAESI Act and to take physical possession of the secured assets in execution of the order dated 12.01.2021 and to handover the same to the Authorized Officer of this Petitioner.”

Facts:

3. The Petitioner is a banking company carrying on banking business under the Banking Regulation Act, 1949. In or about April, 2005, one Mr.Dipak Digambar Naik along with Mrs.Aruna Naik (for

short referred as “*the co-borrowers*”), the Directors of M/s.Millennium Motors Pvt. Ltd. had approached Citi Financial Consumer Finance India Limited (for short “*CCFIL*”) for grant of credit facilities. Based on the request of the borrowers, CCFIL sanctioned housing loan for a sum of Rs.30,41,069/- to the said borrowers. Such credit facility was repayable in 96 Equated Monthly Installments (EMI) of Rs.47,040/- with interest at the rate of 10% p.a. The borrowers created Equitable Mortgage by deposit of title deeds of the land bearing Plot No.47, admeasuring 3600 sq. ft. being part of the larger land bearing Survey No.48/2 (City Survey No.410/519, Yerwada, Pune along with constructed residential bungalow admeasuring 2600 sq.ft. built up area (for short “*the secured assets*”), for loan amount of Rs.30,41,069/- sanctioned under housing loan. Further in the month of May, 2009, the borrowers again approached CCFIL for grant of additional credit facilities. CCFIL granted a further loan of an amount of Rs.81,00,000/-.

4. The said loan amount of Rs.81,00,000/- was repayable in 82 EMIs of Rs.1,36,139/-. As the title documents were already deposited, the fresh loan amount was liquidated by deducting the outstanding amount from the earlier loan amount and the remaining amount was disbursed.

5. As the loan being sanctioned and disbursed, various security documents were executed in favour of CCFIL. The borrowers assured to honour the repayment schedule for repaying back the said financial facilities as per the agreed terms.

6. However, the borrowers failed to honour the commitment and perform terms and conditions of the loan agreement. As the account became highly irregular, the CCFIL classified the account of the borrowers as Non-Performing Asset (for short "NPA") in accordance with the RBI Guidelines.

7. By a Deed of Assignment dated 9 April 2013, CCFIL assigned to the Petitioners herein, all its rights, title, interest, benefit in and to the debts due and payable by the borrowers together with any incidental rights thereto including assignment of and benefits under the financial instruments along with the right to enforce its interest in the underlying securities thereunder. Pursuant to the Deed of Assignment, the Petitioner was entitled to demand and recover repayment of the debt in question as assignee of CCFIL.

8. The Petitioner accordingly initiated recovery proceedings under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI") by issuing a notice dated 31 March, 2014 under Section 13(2) calling upon the borrowers to pay a sum of

Rs.91,33,304/- due and payable as on 31 March, 2014 with further interest at the contractual rate from 1 April, 2014 till payment and/or realization.

9. There was no reply filed by the borrowers or by any other parties to the said notice issued under Section 13(2) of the SARFAESI Act. The Petitioner accordingly issued a notice dated 16 October 2014 under Section 13(4) of SARFAESI Act. The Petitioner also took symbolic possession of the secured assets and also published possession notice in newspaper in compliance with the Securitization Rules.

10. Sometime in the year 2015 it came to the knowledge of the Petitioner that one Mr.Jayraj Khanvilkar (for short “the third party”) informed he had filed Special Civil Suit No.676 of 2010 against the borrowers in which a decree of cancellation of the Deed of Assignment dated 17 May, 2005 was passed. The Petitioner/Bank was not impleaded as a party to the said suit.

11. The Petitioner thereafter instituted a suit being Special Civil Suit No.1436 of 2015 against the borrowers and said Mr.Jayraj Khanvilkar, before Civil Judge (Senior Division), Pune for setting aside the decree passed in Special Civil Suit No. 676/2010. In the said Special Civil Suit an application below Exhibit ‘5’ came to be filed by the Petitioner on which an Order dated 25 November 2015 was

passed granting temporary injunction in favour of the Petitioner restraining Defendants from alienating the suit property.

12. Thereafter the Petitioner as per the provisions of Section 14 of the SARFAESI Act, filed Securitization Application No.978 of 2020 seeking necessary assistance for taking possession of the secured assets. Respondent No.1 / District Magistrate, Pune by an order dated 12 January 2021, allowed the said Securitization Application and directed Respondent No.2 Tahsildar and Respondent No.3 / Executive Magistrate, Pune to take possession of the secured assets and to hand over the same to the authorized officer of the Petitioner.

13. Respondent No.3 thereafter issued a notice dated 1 February, 2021, fixing 26 February, 2021 as the day for taking possession of the secured assets and called upon the borrowers to hand over physical possession of the secured assets to Respondent No.3 so as to enable him to hand over to the authorized officer of the Petitioner, thereby executing the order dated 12 January, 2021. The Police Authorities were also requested to render necessary protection for taking physical possession.

14. On 26 February 2021 as the possession could not be taken, Respondent No.3 once again issued a notice dated 26th February, 2021 thereby fixing 30 March 2021 as the date for taking

physical possession, and to in turn, hand it over to the authorized officer of the Petitioner.

15. However, on 18 March 2021, one person by name Mr.Jayraj Khanvilkar (for short 'the third party') objected to handing over possession of the secured assets.

16. The Petitioner by its letter dated 14 July, 2021 informed Respondent No.1 / District Magistrate about the said factual events and further informed that the objection raised by a third party cannot be considered and the same are required to be rejected.

17. The third party by his letter dated 30 August 2021 once again raised an objection to the measures taken by the Petitioner and requested that the measures be stopped. On such letter of the third party, Respondent No.1 / District Magistrate by his letter dated 2 September 2021 issued to Petitioner's Authorized Officer, directed to give explanation and clarification to the objection raised by the third party.

18. The Petitioner thereafter by its letter dated 26 November 2021 requested Respondent No. 3 Nayab Tahsildar that since there was no stay to the order dated 12 January 2021, passed by the Respondent No.1 / District Magistrate, Pune, despite the date of possession being fixed, the order was not being executed. The Petitioner therefore requested to take necessary direction for

possession of the secured asset to be taken over.

19. Thereafter, the date of taking over of possession was fixed on various occasions, that is, on 20 January 2022, 15 February 2022, 5 April 2022, however, the physical possession of the secured asset was not taken over. Respondent No.1 / District Magistrate, Pune however by his letter dated 17 November 2022 addressed to the Petitioner informed that the possession of the secured assets cannot be taken until appropriate orders are passed in the Special Civil Suit No. 1436 of 2015 filed by the Petitioner before the Civil Court, at Pune.

20. The Petitioner on the above backdrop has filed the present Writ Petition challenging the delay in the execution and implementation of order dated 12 January, 2022 passed by Respondent No.1/ District Magistrate Pune and the legality of the Communication dated 17 November 2022 addressed by Respondent No.1 by which the Respondent No.1/ District Magistrate, Pune took a position that the possession of the secured assets cannot be taken until appropriate orders are passed in Special Suit No. 1436 of 2015 by the District Court, Pune.

21. The Petitioner has raised various contentions in the present Writ Petition which are as under:-

(A) Respondent Nos.2 and 3 have grossly acted in

breach of the settled position in law and the order passed by this Hon'ble Court from time to time, to execute the order passed by Respondent No.1 and in fact the same amounts to contempt of the order passed by this Hon'ble Court.

(B) The Respondent Nos.2 and 3 have erred in not executing and implementing the order passed by the Respondent No.1, dated 12 January 2022 within a reasonable period of time.

(C) Respondent No.2 and 3 have failed to appreciate that the very purpose of the SARFAESI Act is defeated if the order passed on an application filed under Section 14 is not implemented in reasonable time.

(D) Respondent Nos. 2 and 3 have failed to appreciate that if the order passed on an application under Section 14 is not promptly executed, there is every likelihood that the defaulting Borrower having notice of the measures taken by the Petitioner would deal with the secured assets and transfer them, which would be difficult to retrieve.

*(E) Respondent Nos. 2 and 3 ought to have followed the guideline issued by the Hon'ble Court in the matter of **Tradewell Vs. Indian Bank** and in the matter of PIL filed by **I.A.R.C. against Union of India.***

(F) Respondent Nos. 2 and 3 have failed to appreciate that while application under Section 14E allowed, the order passed thereon is also former in nature and not to be implemented without verifying any further document. The Respondent Nos.1 and 2 are not required to adjudicate any issue at the stage of execution.

(G) Respondent Nos.2 and 3 ought to have considered the apprehension of the Petitioner that the borrowers would attempt to dispose of the secured asset and if they succeed in the ulterior motives, grave harm and prejudice would be caused to the Petitioner.

Submissions of the Parties:

22. Mr.Prathamesh Kamat, counsel for the Petitioner/Bank has submitted that a third party would have no right, to stall the execution in SARFAESI proceedings merely by filing a letter or by filing a civil suit against the borrower. The only remedy such party could have, was to invoke the provisions of Section 17 of the SARFAESI Act. It is submitted that the third party has admittedly not filed any proceedings under Section 17 of the SARFAESI Act. It is next submitted that the third party infact had filed a collusive suit and obtained a decree against the borrowers. It is submitted that the said decree would not affect the measures being taken by the Petitioner under the SARFAESI Act. It is submitted that there was no dispute that the borrower had created an equitable mortgage of the secured assets with the petitioners, and there was no stay granted by any Court to prevent the enforcement of the measures / steps being taken by the petitioner under the SARFAESI Act. Thus, there being no prohibitory orders against Respondent Nos.2 and 3 from executing the Orders, these Respondents need to immediately act on the order passed by Respondent No.1 / District Magistrate, Pune.

23. Ms. Shruti Vyas, Counsel for the State opposed the petition and stated that there is a decree passed by the Civil Court, in favour of the third party and unless and until the decree is set

aside, the SARFAESI proceeding cannot move ahead. She would submit that for such reasons directions not to assist the Petitioners to take over the possession of the mortgaged assets were issued by Respondent no.1, to Respondent Nos.2 and 3. Ms. Shruti Vyas would hence submit that the petition be dismissed with costs.

ANALYSIS AND CONCLUSION:

24. We have heard counsel for both the sides. We have also gone through the record, and authorities cited by both the sides.

25. It is an admitted fact that the borrowers had availed of a housing loan and other credit facilities from the Petitioner. It is also an admitted fact that in relation to the said loan as and by way of security, a Deed of Mortgage was entered into in the month of May 2005 in so as to mortgage the property in favour of the CCFIL. After the loan account of the borrowers was declared as an NPA, a notice under Section 13(2) of the SARFAESI Act was issued on 31 March, 2014, to which no reply was filed by the borrowers. The Petitioner hence invoked the provisions of Section 13(4) of the SARFAESI Act by issuance of a Notice dated 16 October, 2014 and took symbolic possession of the secured assets. As the possession was not handed over even after issuance of the notice under Section 13(4) of the SARFAESI Act, the Petitioner moved an application before the District Magistrate, Pune / Respondent No.1 by filing Securitization

Application No.978 of 2020 so as to obtain physical possession. On such application of the Petitioner an Order was passed on 12 January 2021, by the District Magistrate, Pune / Respondent No.1 allowing the application, and directed Respondent Nos.2 and 3 to hand over possession of the secured assets to the Petitioner.

26. Only after the District Magistrate, Pune started taking measures for obtaining possession of the secured assets, third party addressed a letter dated 18 March, 2021 objecting to the Petitioner taking over the possession of the secured assets on the ground that he had obtained a decree of cancellation of Deed of Assignment, and on the ground that the suit filed by Petitioner Bank challenging the decree is pending for adjudication.

27. In the above context as to whether the District Magistrate would be correct and legal in his approach to act upon such letter of the third party and not proceed to take an action to take over the possession in Section 13(4) of the SARFAESI would mandate, it would be necessary to extract Section 13(4), 17 and 34 of the SARFAESI Act. Section 13(4), 17 and 34 of the SARFAESI Act reads as under:-

Section 13. Enforcement of Security Interest

Section 13 (4). *In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:*

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or

sale for realising the secured asset;

[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Section 17. Application against measures to recover secured debts

(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this chapter, [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

[(1-A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the

measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.] (4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

[(4-A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,

(a) has expired or stood determined; or

(b) is contrary to Section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts

Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

Section 34. Civil Court not to have jurisdiction.

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or an Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

28. From a reading of the aforesaid provisions, it is clear that these provisions are a code by itself when it comes to an action being taken under the SARFAESI Act is concerned. As per Section 34 there is a clear bar to the filing of a civil suit in respect of any action which the DRT or the Appellate Tribunal is empowered under the SARFAESI Act to determine as also no injunction shall be granted by any court or other authority in respect of any action being taken *interalia* under the SARFAESI Act or the RDB Act 1993.

29. In such context, a Division bench of this court in ***Nasik Merchant Co-op. Bank Vs. The District Collector Jalna*** in Writ *Petition No.10069 of 2022*, has held that there is no prohibition under the scheme of the SARFAESI Act that comes in the way of district

magistrate to re-exercise the powers to execute the orders passed under section 14. Paragraph no. 20 of the said judgment reads as under:

20. *The uncontroverted factual aspects in present matter depict that the respondent Nos. 5 and 6 have devised novel, unimaginable and unsustainable modus operandi to defeat ends of justice and fair play. It is not only the matter of physical altercation, but would tantamount to assault on the law and statute. They have the audacity to overrule the law. The growing tendency of overpowering the law cannot be tolerated. In peculiar facts and circumstances of this case, we are inclined to exercise powers under Article 226 of the Constitution of India to protect the rule of law and deprecate rising tendency of using criminal force against recovery proceeding undertaken by the financial institutions in terms of SARFAESI Act. We do not find any prohibition under the scheme of the SARFAESI Act that comes in the way of District Magistrate or his delegate to re-exercise the powers to execute the orders passed under section 14.*

[emphasis supplied]

30. A Co-ordinate Bench of this Court in **Kotak Mahindra Bank Ltd. Vs. State of Maharashtra** in Writ Petition No.6805 of 2023 where one of us (Shri Justice Rajesh S. Patil) was a member of the bench, held that after passing of order under section 14 for dispossession of the borrower, the same cannot be allowed to be intermeddled with by any person, the same would result in a mockery of the rule of law. Para no. 13 reads as under :

13. *Considering the law laid down by the Division Bench of this Court and referred to by us above, we are unable to agree with the submission made by the learned AGP that the District Magistrate does not have the power to re-execute his own order or that he has become functus officio. If we were to take the view as propounded by the learned AGP it would lead to a complete chaos. We have no hesitation in stating that the borrowers have devised a novel, unimaginable and unsustainable modus operandi to defeat the ends of justice. It is not only the matter of physical altercation by assaulting the security guard appointed by the Petitioner Bank and breaking open the lock and seal affixed on the secured asset which is*

wholly illegal, but the same would also tantamount to an assault on the law and the statute itself. If, after orders are passed under section 14 for dispossession of the borrower, and the same are inter-meddled with by any person including the borrower, the same would result in a mockery of the rule of law. In such a situation the court cannot and should not remain a mute spectator and allow the illegality to continue. The tendency of trying to overreach the law as well as the orders passed by Judicial Authorities has to be nipped in the bud right away, lest the rule of law shall suffer.

[emphasis supplied]

31. In **Balkrishna Rama Tarle V. Phoenix ARC (P) Ltd.** reported in **(2023) 1 SCC 662** it was held that after initiation of proceedings and taking steps under Sections 13(2) and 13(4) of the SARFAESI Act by a secured creditor, the District Magistrate should assist secured creditor in obtaining possession of secured assets. District Magistrate, erred in passing order that only after termination of tenancy rights of petitioner by finance company (secured creditor) by following due procedure of law, further orders regarding possession of mortgage property shall be passed, and thereafter the said application shall be decided. Para no.4, 18 to 21 read as under:

4. That thereafter, the secured creditor filed an application under Section 14 of the SARFAESI Act seeking assistance of designated authority - Respondent 3 herein - District Magistrate, Nashik, for taking physical possession of the secured assets. The petitioner herein - original Respondent 2 claiming to be a tenant in respect of the ground floor plus first floor showroom along with service station on a part of the secured assets bearing Nos. 465 and 463 sought to intervene in the said proceedings filed under Section 14 of the SARFAESI Act. The petitioner placed reliance upon an order dated 20-4-2018 passed in Regular Civil Suit No. 58 of 2018 filed by him against one of the borrowers, whereby one of the borrowers was restrained from dispossessing him from the said premises. At this stage, it is required to be noted that neither the borrowers) nor the petitioners) instituted any proceedings before the Debts Recovery Tribunal ("DRT) under Section 17 of the SARFAESI Act against the steps taken under Section 13 of the SARFAESI Act.

18. Thus, the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial steps and Section 14 does not involve any adjudicatory process qua points raised by the borrowers against the secured creditor taking possession of the secured assets. In that view of the matter once all the requirements under Section 14 of the SARFAESI Act are complied with/satisfied by the secured creditor, it is the duty cast upon the CMM/DM to assist the secured creditor in obtaining the possession as well as the documents related to the secured assets even with the help of any officer subordinate to him and/or with the help of an advocate appointed as Advocate Commissioner. At that stage, the CMM/DM is not required to adjudicate the dispute between the borrower and the secured creditor and/or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party to be relegated to raise objections in the proceedings under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal.

19. Under the circumstances in the present case, no error has been committed by the High Court in setting aside the order dated 27-8-2021 passed by the designated authority keeping the application pending till the secured creditor initiates the legal proceedings for eviction of the tenant cannot get the possession in an application under Section 14 of the SARFAESI Act. The High Court has rightly directed the designated authority to proceed further with the application under Section 14 of the SARFAESI Act, and to dispose of the same in accordance with the provisions of Section 14 of the SARFAESI Act.

20. Now so far as the reliance placed upon the decision of this Court in Harshad Govardhan Sondagar by the learned counsel appearing on behalf of the petitioner is concerned, the same shall not be applicable to the facts of the case on hand, what is observed by this Court in the aforesaid case is the DM/CMM has to give a notice and opportunity of hearing to the person in possession of the secured assets claiming to be a "Class (1) or (2)' lessee of mortgagor/borrower, as well as to secured creditor, consistent with the principles of natural justice, and then take a decision. In the said decision, it is not observed that the DM/MM has to adjudicate the rights between the parties.

21. Now so far as the reliance placed upon the decision of this Court in the case of Vishal N. Kalsaria by the learned counsel appearing on behalf of the petitioner is concerned, the said decision shall also not be applicable to the facts of the case on hand. In the said decision, the question before this Court was of conflict of claim under the Maharashtra Rent Control Act, 1999 and the provisions of the SARFAESI Act, and which law will prevail. The scope and ambit of the powers to be exercised under Section 14 of the SARFAESI Act were not directly in question before this Court. Even as observed and held by this Court in the aforesaid decision, a judgment cannot be interpreted and applied to fact situations by reading it as a statute. One cannot pick up a word or sentence from a

judgment to construe that it is the ratio decided on the relevant aspects of the case (para 33).

[emphasis supplied]

32. A Division Bench of this Court in ***Punjab National Bank vs. State of Maharashtra & Ors., Writ Petition (Stamp) No.26048 2019***

held that the possession of the secured assets can't be held up and Tahsildar should take immediate steps to hand over possession.

Paragraph 4 of the said order reads as under :-

"4. From the facts noted herein-above highlighting that the order dated 21.01.2019 passed in Suit No.12 of 2019 has not been issued against the Bank or the Tahsildar, we dispose of the Petition directing the Tahsildar, Thane who has been appointed by the District Magistrate, Thane vide Exh.A to take possession of the secured asset. We direct the Tahsildar not to delegate said function to the Circle Officer because in law he himself is a delegatee and cannot further delegate the authorisation. The Tahsildar, District Thane is directed to comply with the direction issued by us today within two weeks of receipt of an authenticated copy of the present order."

33. After going through the record, it is clearly seen that the third party had given a No Objection and had consented for the mortgage of secured asset and had received a sum of Rs.30,41,069/- of the Loan amount from the erstwhile lender CCFIL by four cheques. It is a matter of record that after the loan account of borrower turned into NPA, a notice under section 13(2) followed by notice under section 13(4) of the SARFAESI were issued by the Petitioner/ Bank, to the borrower. The borrower had deposited the Original Title Deed of the suit property with CCFIL which were in turn deposited with Petitioner/ Bank. In the suit filed by the third party, a

decree was passed after the borrower had appeared in the suit without any summons and had not contested the suit and the decree was passed since it appeared that the dispute was settled amicably. The Petitioner/ Bank was not a party to said proceedings.

34. Apart from merely addressing a letter to the Petitioner and to Respondents, no proceedings were filed by the third party under Section 17 of the SARFAESI Act. In such a situation, taking into consideration the settled position in law as discussed above, we are of the clear opinion that the Respondents in absence of any stay, much less an order which could be passed in the proceedings which the third party could initiate only under Section 17 of the SARFAESI Act before the DRT. We are of the clear view that the Respondents were totally illegal in their approach in addressing the impugned communication dated 17 November 2022 as also stalling the recovery proceedings as initiated by the Petitioner.

35. In the light of the above discussion, the Petition deserves to be allowed. It is accordingly allowed in terms of the prayer clauses (a), (a1) and (b), which read as under:

“(a) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other Writ of the like nature thereby directing the Respondent No.2 and 3 to forthwith and or within such time as this Court may deem fit and proper to execute and implement order dated 12.01.2021 passed by the Respondent No.1 under Section 14 of SARFAESI Act in an Application being Application No. 978 of 2020.

a1) This Hon’ble Court be pleased to issue a Writ of

Mandamus or any other Writ of the like nature thereby quashing or setting aside the impugned letter/communication dated 17.11.2022 directing that the possession of the secured asset cannot be taken until appropriate orders are passed in Civil Suit filed by Petitioner in District Court Pune being Civil Suit No. 1436 of 2015.

(b) This Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ of the like nature thereby directing the Respondent No.2 and 3 to forthwith and or within such time as this Court may deem fit and proper to execute and implement order dated 12.01.2021 passed by the Respondent No.1 under Section 14 of SARFAESI Act and to take physical possession of the secured assets in execution of the order dated 12.01.2021 and to handover the same to the Authorized Officer of this Petitioner."

36. Disposed of as allowed. No costs.

(RAJESH S. PATIL, J.)

(G.S. KULKARNI, J.)