IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1764 OF 2023

Sanjay @ Yuvraj Vijay Kadam .. Petitioner

Versus

The Kotak Mahindra Bank Ltd & Ors. .. Respondents

Mr.Prathamesh Kamat a/w Chinmayee Ghag, Nishant Rana i/b Zastriya, *Advocates for Respondent No.1.*

Mr.Chetan G. Patil, *Advocate for Petitioner.*

Mr.Pratap Patil, Advocate for Respondent No.2.

Ms. M.S. Bane, AGP for Respondent Nos. 4 and 5.

CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.

DATE : JULY 06, 2023

P. C.

1. The above writ petition is filed *inter alia* seeking an order and direction to quash and set aside the order dated 6th February, 2018 passed by the District Magistrate under Section 14 of the SARFAESI Act, 2002. Pursuant to this order, the Petitioners, who claim to be the auction purchasers of the mortgaged property from the Respondent No.2 Bank (Baramati Sahakari Bank Ltd), were dispossessed. It is not in dispute that physical possession of the mortgaged property is currently with the Respondent No.1 Bank (Kotak Mahindra Bank Ltd) pursuant to the order passed under Section 14 of the SARFAESI Act, 2002.

2. Initially the present writ petition was filed because the Debt Recovery Tribunal, Pune, who would have jurisdiction to entertain any application in the present matter, was not available. It is in these circumstances, that the present writ petition was filed.

3. Now, the Debt Recovery Tribunal, Pune is available. In these circumstances, the learned counsel appearing on behalf of the 1st Respondent Bank submitted that there is an equally efficacious alternate remedy available to the Petitioner and therefore this writ petition ought not to be entertained and the Petitioner be relegated to avail of the alternate remedy.

4. The learned counsel appearing on behalf of the 1st Respondent Bank, on instructions, additionally stated that the sale conducted in relation to the mortgaged property [at the first instance] has already failed and in order to ensure that the Petitioner can avail of the alternate remedy, the 1st Respondent Bank will not put up the mortgaged property for sale for a period of 3 weeks from today. This statement is however caveated by saying that the same is made without prejudice to the rights and contentions of the 1st Respondent Bank and should not in any way be construed to mean any concession on their part.

5. On the other hand, the learned advocate appearing on behalf of the Petitioner, submitted that firstly there is no absolute bar in entertaining the writ petition merely because there is an equally efficacious alternate remedy. He submitted that this would depend on the facts and circumstances of each case. He further submitted that in the facts of the present case the 1st Respondent Bank has obtained the order under Section 14 of the SARFAESI Act, 2002 by deliberately suppressing the fact that the mortgaged property was first mortgaged to the 2nd Respondent Bank (Baramati Sahakari Bank Ltd), who has sold the mortgaged property to the Petitioner. It is therefore submitted that the borrower could not have created any valid mortgage in favour of the 1st Respondent Bank. In these circumstances, he submitted that the writ petition be entertained.

6. We have heard the learned counsel for the parties at some length. It is now well settled that the order passed under Section 14 of the SARFAESI Act, 2002 is in fact a measure as contemplated under Section 13(4) of the said Act and would therefore be susceptible to challenge under Section 17, before the Debt Recovery Tribunal. The Debt Recovery Tribunal would obviously have the power to decide all questions on fact and law. In these circumstances, we are of the view that the Petitioner should be relegated to avail the alternate remedy under Section 17 of the SARFAESI Act, 2002. All the contentions raised by the Petitioner in the present Petition can be raised before the Debt Recovery Tribunal.

7. In the meanwhile, as per the statement made by the learned advocate appearing for the 1st Respondent Bank (Kotak Mahindra Bank Ltd), it shall not proceed with the sale of the mortgaged property for a period of 3 weeks from today. It is made clear that this statement is made without prejudice to the rights and contentions of the 1st Respondent Bank and should not in any way be construed to mean that they have conceded anything in the above matter. It is also made clear that all rights and contentions of all sides are expressly kept open to be agitated before the Debt Recovery Tribunal.

8. We have by this order not opined on the merits of the matter one way or the other and the same shall be decided by the Debt Recovery Tribunal in the Securitization Application proposed to be filed by the Petitioner.

9. It is needless to clarify that if there is any delay in filing the Securitization Application, the Petitioner shall be entitled to file an Application seeking condonation of delay. That Application, if filed, shall be decided on its own merits and in accordance with law.

10. The writ petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.] **[B. P. COLABAWALLA, J.]**