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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6490 OF 2023

Shalini V. Shinde ...Petitioner
V/s.
Bank of Baroda & Ors. ...Respondents

Mr.Pandit Kasar for the Petitioner.

Mr.Rajan Pawar for Respondent No.1.

Ms.Shruti D. Vyas "B" Panel Counsel for the State – Respondent No.12.

CORAM : G.S. KULKARNI &
RAJESH .S. PATIL, JJ.
DATE : 7TH JUNE, 2023.

P.C. :-

1. Heard the learned counsel for the parties. Respondent No.2 is the borrower, Respondent Nos.3, 4 and 5 are the partners of Respondent No.2 borrower and Respondent Nos.6 to 11 are the guarantors.

2. This Petition filed under Article 226 of the Constitution of India, prays for the following reliefs :-

> a). By an order of this Hon'ble Court, the order dated 03/02/2023 passed by the Learned

District Magistrate, Nashik at Nashik in Securitization Application No. 286 of 2020 may be quashed and set aside with immediate effect;

b). By an order of this Hon'ble Court, during the pendency of the present Writ Petition all proceeding arising out of the order dated 03/02/2023 passed by the Learned District Magistrate, Nashik at Nashik in Securitization Application No. 286 of 2020 and subsequent Auction notice dated 22/5/2023 issued in respect of the property mentioned herein above may kindly be stayed.

c). Ad-interim / interim order in terms of prayer clause (b) ;

d). Any other order in the interest of justice, equity and good conscience.”

2. It is not in dispute that Respondent No.1 Bank had initiated proceedings against Respondent No.2 under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 (for short “**SARFAESI Act**”). A notice dated 22/5/2023 under Section 13(2) of the SARFAESI Act was issued. Finally on 3rd February, 2023 impugned order under Section 14 of the SARFAESI Act was passed by the learned District

Magistrate in Securitization Case No.286 of 2020, by which Respondent No.1 Bank has proceeded to take possession and sell the mortgaged properties.

3. The contention of the Petitioner is that there are three properties the description of the said properties is stated in the sale notice issued by the Respondent on 22nd May, 2023 at Exhibit "C" to the Petition. As described in the notice, property at Serial No.1 is an open vacant plot No.18. situated at Renuka Nagar Maparwadi Road, Sinnar, Tq. Sinnar, District Nasik. Property at Serial No.2 is a residential-cum- commercial Building on S.No. 981 (1240), Plot No.7, at Saptashrungi Nagar, Naygaon Road, Sinnar District Nasik.

4. The grievance of the Petitioner is that Respondent No.1 Bank is proceeding to sell the properties, as shown in Exhibit "C" to realize the dues of the borrowers at the reserve price for property No.1 shown to be Rs.14,02,000/- and in respect of property No.2 the reserve price is Rs.85,75,000/-, as set out in paragraph 5 of the schedule contained in the said notice. The residential house which is described at property No.3 residential bungalow G + 1 constructed on plot No.26, Survey No.59/2C/1 (Old Survey No.58) opposite Sai Baba Temple, Renuka Nagar, Maparwadi Road, Village Sinnar, Rq. Sinnar,

District Nashik.

5. It is the petitioner's submission that no coercive steps be taken by the Respondents in respect of property No.3 being a residential bungalow as sufficient security is available with the Respondents, being property No.1 and property No.2. There are other contentions raised on behalf of the Petitioner.

6. Respondent No.1 Bank has opposed this Petition on the ground that the Petitioner has an alternate remedy to approach the Debt Recovery Tribunal by invoking its jurisdiction under Section 17 of the said Act, in as much such measures being taken under Section 14 of the said Act are consequential to the action reserved under Section 13 (2) of the said Act. In support of the contention, learned counsel for Respondent No.1 bank has placed reliance on the recent decision of the Supreme Court in case of ***South Indian Bank Ltd. & Ors. vs. Naveen Mathew Philip & Anr. 2003 SCC OnLine SC 435*** in which the Supreme Court reiterating the position in law has held that it is only in exceptional circumstances the proceedings under Article 226 of the Constitution of India can be entertained.

7. On the above backdrop, we have heard learned counsel for the

parties, we have also perused the record.

8. Considering the facts of present case, we are of the opinion that as an efficacious alternative remedy is available to the petitioner under Section 17 of the SARFAESI Act, it is appropriate that the Petitioner approaches the Debt Recovery Tribunal to challenge the impugned order.

9. We accordingly dispose of the Petition by directing the Petitioner to approach the Debt Recovery Tribunal by invoking its jurisdiction under Section 17 of the said Act. All contentions of the Petitioner are exclusively kept open.

10. Learned counsel for the petitioner would however, submit that as the Petitioner is ready and willing to approach the Debt Recovery Tribunal (DRT), till the Petitioner approaches the DRT, the *ad-interim* protection granted by the Court be continued. We are of the opinion that without prejudice to the rights and contentions of the Respondents, to enable the Petitioner to approach the Debt Recovery Tribunal, we direct that Respondent No.1 Bank shall not proceed to take further steps in regard to property No.3, passed by the District Magistrate for a period 30 days from today.

11. We also clarify that Respondent No.1 Bank is free to proceed against property No.1 and property No.2.

12. We also clarify that the limited indulgence as shown by us is in no manner a reflection on the merits of the rival contentions, which the Petitioner and the respondent are free to assert before the Debt Recovery Tribunal.

13. All the contentions of the parties are kept open and the same be decided on their own merits and in accordance with law.

14. Disposed of in the above terms. No costs.

(RAJESH S. PATIL, J.) ***(G.S. KULKARNI, J.)***