IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7568 OF 2023

Indian Overseas Bank .. Petitioner

Versus

YUGANDHARA SHARAD PATIL

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Samarth Sahakari Bank Limited & Ors. .. Respondents

Mr. Sidharth Samantaray a/w Mr. T.N. Tripathi and Ms. Kalyani Wagle i/b T.N. Tripathi, *Advocates for the Petitioner.*

Mr. Muralidhar Khadilkar, Mr. Aakash Joshi, Mr. Manish Rai and Hiten Wasan i/b Muralidhar Khadilkar, *Advocates for Respondent Nos. 1 and 2.*

Mr. Yuvraj Narvankar, *Advocate for Respondent No. 7.*

Mr.R.S. Pawar, *AGP for the Respondent-State.*

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

DATE : AUGUST 09, 2023

P. C.

1. The above Writ Petition is filed *inter alia* seeking a direction to remove the attachment of Respondent Nos. 1 and 2 from the 7/12 extract of the immovable property bearing Survey No.36/5/2 together with a residential bungalow being constructed thereon admeasuring 1535 sq. mtrs. at Village Balewadi, Taluka Haveli, District Pune (for short the "**secured asset**").

2. The facts of this case reveal that the Petitioner had originally advanced credit facilities to Respondent No.3 (represented by the Official Assignee) and Respondent No.4 (hereinafter collectively referred as "***the borrowers***") on such terms as recorded in the sanction letters dated 29th April 2015 and 30th June 2015. The aforesaid credit facilities were secured, *inter alia,* by the borrowers by way of mortgage of the secured asset recorded in a Memorandum of Deposit of Title Deeds dated 1st July 2015. There were defaults committed by the borrowers and their account was classified as a Non-performing Asset (**"NPA"**) on 30th September 2017 in the books of the Petitioner. This was done in accordance with the guidelines of the Reserve Bank of India.

3. The Petitioner Bank issued a Notice dated 3rd October 2017, under section 13(2) of the SARFAESI Act, 2002 *inter alia* calling upon the borrowers to pay to it a sum of Rs.4,54,47,960.81/- [due as on 30th September 2017] along with further interest as stated therein. Despite receipt of the said notice, the borrowers failed to comply with the demand. In these circumstances, the Petitioner Bank took symbolic possession of the secured asset on

12th April 2018 under section 13(4) of the SARFAESI Act, 2002. After this, the Petitioner also filed an application before the District Magistrate, Pune, under section 14 of the SARFAESI Act, 2002 for seeking physical possession of the secured asset. The said application was allowed by the District Magistrate by order dated 16th March 2019 in which he ordered that physical possession of the secured asset be taken and thereafter handed over to the Authorised Officer of the Petitioner Bank.

4. It is the case of the Petitioner that sometime in February 2020, the Petitioner realised that the Official Assignee, High Court, Bombay, had placed a board at the secured asset, recording that it was in physical possession of the secured asset. Furthermore, on making enquiries from the website of this Court, the Petitioner realised that one Messers K.K.B. Properties and its partner Respondent No. 3 were adjudged as insolvents under the provisions of the Presidency Town Insolvency Act, 1909 in Insolvency Petition No. 18 of 2017. With this information, the Petitioner, in the said Petition, filed Notice of Motion No. 2 of 2021 seeking a direction *inter alia* for the Official Assignee to hand over physical possession of the secured asset to the Petitioner for the realisation of its security under the provisions of the SARFAESI Act. By an order dated 7th October 2022, this Court allowed the said Notice of Motion and the Petitioner was granted liberty to proceed under the provisions of the SARFAESI Act, 2002. Pursuant to this order, the Official Assignee High Court, Bombay, handed over physical possession of the secured asset to the Petitioner on 18th November 2022.

5. Thereafter, the Petitioner issued an e-auction notice dated 4th March 2023 whereby the sale of the secured asset was to be conducted on 23rd March 2023 on the terms and conditions mentioned therein. On the day of the auction, Respondent No.7 was declared as the successful auction purchaser with its bid of Rs.10,02,93,000/-. Subsequent to the auction, on 23rd March 2023, the Petitioner became aware of the 1st Respondent Bank's attachment dated 16th April 2018, which is noted in the revenue records maintained by Respondent Nos.5 and 6. The attachment was intimated to the revenue authorities on 2nd February 2019, and Mutation Entry No.8996 was entered on 2nd June 2019.

6. In these circumstances, the Petitioner, *vide* letter dated 29th March 2023, requested Respondent Nos. 1 and 2 to issue a communication to Respondent No. 6 for removing the said attachment. Further, *vide* letter dated 2nd June 2023, the Petitioner called upon Respondent Nos. 1 and 2 to furnish a copy of the attachment dated 16th April 2018 noted in the revenue records against the Petitioner's exclusive security. The Petitioner has not received any response to these letters. Furthermore, the Petitioner *vide* letter dated 29th March 2023 called upon Respondent No. 6 to remove the noting of the attachment dated 16th April 2018 from the revenue records as the secured asset is the exclusive security of the Petitioner. However, there was no response. It is under these circumstances the Petitioner has approached this Court under Article 226 of the Constitution of India, seeking the reliefs more particularly set out in the writ petition.

7. In this factual backdrop, Mr. Samantaray, the learned counsel appearing on behalf of the Petitioner, submitted that the Petitioner has sold the secured asset under the provisions of the SARFAESI Act, and thus, as per section 26-E thereof, a secured creditor who has registered the security interest or other creditor

who has registered the attachment order in his favour with CERSAI, shall have priority over the claims of other creditor/s having a subsequent security interest created over the secured asset in question. The learned counsel submitted that the mortgage of the secured asset was created in favour of the Petitioner by the borrowers on 1st July 2015, and the Petitioner registered its security interest over the secured asset with CERSAI on 11th July 2015 and was subsequently modified on 3rd July 2023 and has also filed a CERSAI report downloaded from the website portal of CERSAI which evidences the said fact. Mr. Samantaray, in support of his submission, relied upon a judgement delivered by a full bench of this Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. v. Joint Commissioner of Sales Tax Nodal 9, Mumbai*** **[(2022) 5 Mah. L.J. 691]** in support of the proposition that the dues of the Petitioner would have priority over the dues of Respondent No. 1 and 2 and that they would have to stand in the queue after the realisation of the dues of the Petitioner. Further, Mr. Samantaray has pointed out that Respondent No. 7 has paid the entire sale consideration within the stipulated time frame as set out under the SARFAESI Act and the Petitioner is now bound to handover possession of the secured asset along with a registered sale certificate to Respondent

No.7. He therefore submitted that the Writ Petition be allowed in terms of prayer clauses set out in therein.

8. After hearing Mr. Samantaray at some length, the learned counsel for Respondent Nos.1 and 2, in reply, fairly accepted that the Petitioner's claim and charge over the secured asset has priority over Respondent Nos.1 and 2's claim.

9. Apart from the above concession, we find that the issue raised in the present Petition is no longer *res-integra* and is covered by a decision of the full bench of this Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. (supra).*** Thus, considering the facts and circumstances of the case as well as the law on the subject as held in the case of ***Jalgaon Janta Sahakari Bank Ltd. (supra),*** we are of the considered view that this is a fit case to exercise our extraordinary equitable jurisdiction under Article 226 of the Constitution of India and allow the writ petition.

10. In view of the forgoing discussion, the attachment levied on the secured asset by Respondent Nos.1 & 2 [dated 16th April 2018] is hereby quashed and set aside. As a consequence, the

Attachment of Respondent Nos.1 & 2 shall be removed from the 7/12 extract of the secured asset on or before 6th September 2023.

11. Rule is made absolute in the aforesaid terms, and the writ petition is also disposed of in terms thereof. The petitioner is allowed to appropriate the sale proceeds received from the sale of the secured asset. However, there shall be no order as to costs.

12. Though we have disposed of the above writ petition, we direct that the same be placed on board on 7th September 2023 to report compliance.

13. 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.]**