

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7551 OF 2023

Satyanarayan Khatod

.. Petitioner

Versus

State Of Maharashtra through Tahsildar, Nashik
And Ors.

.. Respondents

Mr. Surel Shah i/b. Mr. Mrityunjay Barai, for Petitioner.

*Mr. A.I. Patel, Addl. GP a/w. Mr. M. M. Pabale, AGP, for
Respondent No.1/State.*

Mr. Abhijeet Joshi, for Respondent No.2 (State Bank of India).

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

DATE : JUNE 20, 2023

P. C.

1. By the present Petition, the Petitioner seeks quashing of the impugned Notice dated 22.05.023. This Notice is issued by Tahsildar to take possession of the secured asset which is a property in Nashik owned by Respondent No.3. The secured asset is as under:

*“S. No. 612/5B/1+612/5B/2, F.P. No. 90 of Nashik
Shiwar Near Kalika Mata Mandir, Off Agra Road,
District Nashik, duly owned by Respondent No. 1
M/s. Manvi Holdings Pvt. Ltd.”*

2. The grievance made by the Petitioner in the present case is that he has an arbitration award against the borrower and in those proceedings a Receiver was appointed initially under section 17 of the Arbitration and Conciliation Act, 1996 and which was thereafter, continued when the final award was passed on 06.04.2021. He submitted that the final arbitration award categorically records that the interim order dated 17.02.2021 with respect to the appointment of the Receiver shall continue till either (i) execution proceedings are filed; or (ii) the final award is set aside by the appropriate adjudicating authority. The learned counsel for the Petitioner submitted that once the property was *custodia legis*, the Tahsildar could not issue any Notice to take possession of the mortgage property under section 14 of the SARFAESI Act, 2002 without seeking permission of the appropriate Court. When we put it to the learned counsel for the Petitioner that this Receiver would continue perpetually if the Petitioner does not file any execution proceedings, he, on instructions, stated that the Petitioner shall file execution proceedings to enforce the arbitration award in the appropriate Court within a period of two weeks from today. He has further stated that he shall also give notice to Respondent No.2 (State Bank of India) of the filing of the said execution application immediately thereafter.

3. Accepting the statements made and recorded earlier, as undertaking given to this Court, we are of the view that the secured asset being *custodia legis*, the secured creditor (State Bank of India) is at liberty to seek directions [in the execution proceedings proposed to be filed by the Petitioner] *inter-alia* directing the Receiver to hand over possession of the secured asset to the Tahsildar, who then, in turn, will hand over possession of the same to the secured creditor.

4. Till appropriate orders are passed by the executing Court, the Tahsildar shall not act upon the impugned Notice dated 22.05.2023.

5. It is made clear that if for any reason the Petitioner does not file the execution proceedings within the period stipulated above, the Tahsildar shall be at liberty to implement the impugned notice dated 22.05.2023 without further orders of the Court.

6. The above writ petition is disposed in the aforesaid terms. However, there shall be no order as to costs. All concerned to act on an authenticated copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]