IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8370 OF 2023

Deutsche Bank .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. R. L. Motwani *for the Petitioner.*

Mr. A. I. Patel, Addl. G.P. with Ms M. S. Bane, AGP *for the Respondents.*

CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.
DATE : JULY 12, 2023

P. C.

1. Rule. With the consent of parties rule made returnable forthwith and heard finally.

2. By this Petition, the Petitioner Bank challenges the order passed by the Chief Metropolitan Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (for short **"SARFAESI")** Act, 2002. By the impugned order, the application filed by the Petitioner seeking physical possession

of the secured asset from the borrower was rejected. The ground on which it was rejected is that the Petitioner had not filed on record the copy of the registration of the security interest with the Central Registry of Securitisation Asset Reconstruction and Security Interest (**CERSAI**) and therefore, by virtue of Section 26-D of the SARFAESI Act, 2002 no proceedings could have been initiated.

3. The learned Counsel appearing for the Petitioner has made a grievance that originally the matter before the Chief Metropolitan Magistrate was argued on 9th May, 2023 and, thereafter, closed for orders. At that time, the Chief Metropolitan Magistrate did not ask the Petitioner Bank to produce the CERSAI Registration Certificate and passed the impugned order. He submitted that in fact the security interest of the Petitioner is registered with CERSAI as far back as on 23rd October, 2017. He has also produced a copy of the said registration from the portal of CERSAI. The learned Counsel submitted that therefore the Chief Metropolitan Magistrate has proceeded on a completely wrong premise and dismissed the application of the Petitioner. Consequently, the impugned order dated 16th May, 2023 ought to be set aside and the matter be remanded back to the Chief Metropolitan Magistrate for fresh consideration, was the submission.

4. We have heard the learned Counsel appearing for the Petitioner Bank and the learned AGP appearing for the Respondents. From the impugned order, we find that the learned Chief Metropolitan Magistrate has dismissed the application filed by the Petitioner Bank only on the ground that no certificate proving registration of the secured asset with the CERSAI has been produced before the Chief Metropolitan Magistrate and hence, under Section 26D, the secured creditor would not be entitled to exercise the rights of enforcement of security under Chapter III of the SARFAESI Act, 2002.

5. In the facts of the present case, we find that in fact, the security interest created in favour of the Petitioner Bank has been registered with CERSAI on 23rd October, 2017. Since this fact has not been taken into consideration by the Chief Metropolitan Magistrate and which according to us is a very material fact, the impugned order is set aside and the application filed by the Petitioner, under Section 14 of the SARFAESI Act, 2002 (Application C.C.No. 752/SA/2022) is restored to the file of the Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai to consider the said application afresh. The Petitioner Bank shall also be at liberty to file an additional affidavit in

the said application to bring the CERSAI Registration Certificate on the record of the Court.

6. Rule made absolute in the aforesaid terms. However, there shall be no order as to costs.

7. 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.]**

Laxmi