

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8005 OF 2023

AU Small Finance Bank Limited

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

YUGANDHARA
SHARAD
PATIL

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by
YUGANDHARA
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Date: 2023.07.13
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Ms. Dimple Tejani i/b Mr. Sanjay Anabhawane,
Advocates for the Petitioner.
Mr. R.S. Pawar, AGP for the State-Respondent Nos. 1 to 5.
Mr. Sachin Deokar, Advocates for Respondent Nos. 6 and
7.

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

DATE : JULY 11, 2023

P. C.

1. Rule. The learned AGP waives service for Respondent Nos. 1 to 5. With the consent of parties, rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed *inter-alia* to set aside the impugned letter dated 11/05/2023 issued by the District Magistrate, Pune in the Restitution Application filed by the Petitioner. The other prayer sought in the Writ Petition is to *inter-alia* direct Respondent

Nos. 2 and 3 to take appropriate steps for restitution of the secured asset viz Flat No. 12 on the 3rd floor in Goyal Enclave Co-operative Housing Society, constructed on Plot No. 18 and 19, Survey No. 114, Hissa No. 3 of Village Kalas, Taluka Haveli, District Pune, by executing the order dated 15/07/2019 passed under Section 14 of the SARFAESI Act, 2002.

3. The limited grievance in the present Petition is that after the order was passed under Section 14 of the SARFAESI Act, 2002, the same was duly executed on 25/02/2020 and physical possession of the secured asset was handed over to the authorised officer of the Petitioner-Bank. Thereafter, Respondent Nos. 6 and 7 (wife and husband), taking the law into their own hands, have broke open the seal put by Respondent No. 3 and trespassed in the secured asset. Since this was done by Respondent Nos. 6 and 7, the Petitioner immediately approached Respondent No. 5 (Vishrantwadi Police Station) and filed a complaint against the borrowers (Respondent Nos. 6 and 7). Thereafter, the Petitioner also filed an Application for repossession of the secured asset with the District Magistrate/Collector of Pune. The District Magistrate refused to act on the said application on the ground that once he has already passed an order

under Section 14 of the SARFAESI Act, 2002, he has become functus officio. It is in these circumstances that the Petitioner-Bank is constrained to approach this Court under Article 226 of the Constitution of India.

4. We have heard the learned counsel on behalf of the Petitioner as well as the learned counsel appearing on behalf of the borrowers (Respondent Nos. 6 and 7). The learned counsel appearing on behalf of Respondent Nos. 6 and 7 fairly conceded that the actions of Respondent Nos. 6 and 7 are unjustifiable in law. He threw himself to the mercy of the Court and on instructions of Respondent No. 7, who is present in the Court, stated that Respondent No. 6 and Respondent No. 7 will hand over possession of the secured asset to the authorised officer of the Petitioner-Bank on 25/07/2023 at 12.00 p.m. Accepting the aforesaid statement as an undertaking given to the Court, we pass the following order:-

ORDER

- (a) The impugned letter dated 11/05/2023 issued by the District Collector, Pune, is quashed and set aside.

- (b) Respondent Nos. 6 and 7 shall hand over vacant, quiet and peaceful possession of the secured asset, namely, Flat No. 12 on the 3rd floor in Goyal Enclave Co-operative Housing Society, constructed on Plot No. 18 and 19, Survey No. 114, Hissa No. 3 of Village Kalas, Taluka Haveli, District Pune, on 25/07/2023 at 12.00 p.m.
- (c) Respondent Nos. 6 and 7 shall remove all their belongings from the secured asset and hand over vacant and quiet possession of the secured asset to the Petitioner's authorised officer on the said date.
- (d) If, for any reason, Respondent Nos. 6 and 7 do not comply with the aforesaid directions, then, Respondent No. 3 shall take physical possession of the secured asset on 27/07/2023 at 12.00 p.m. and dispossess and/or vacate any person/s found therein, and thereafter hand over the same to the authorised officer of the Petitioner-Bank. In such an event, the authorised officer of the Bank shall remain present on 27/07/2023 at 12.00 p.m. to take physical possession of the secured asset from Respondent No. 3.

(e) To carry out the directions given in clause (d) above, the local Police Station (Vishrantwadi Police station) shall give all necessary assistance to Respondent No. 3 (including deputing adequate number of police personnel) to ensure that Respondent No. 3 is able to take physical possession of the secured asset on 27/07/2023, failing which the Senior Inspector of Police of the said Police Station shall be held liable for contempt of this order.

5. We must state that we have passed these directions because the issue in the present Writ Petition is squarely covered by decisions of the Division Bench of this Court in the case of **Nashik Merchant Co-operative Bank Vs. The District Collector, Jalna & Others [Writ Petition No. 10069 of 2022 decided on 28/02/2023]** and in the case of **Kotak Mahindra Bank Limited and Anr Vs. State of Maharashtra and others [Writ Petition No. 6805 of 2023 decided on 30/06/2023]**.

6. Rule is made absolute in the aforesaid terms and the Writ Petition is accordingly disposed of.

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.]