

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10064 OF 2023

Deepak Vinay Rao

..Petitioner

Versus

GIC Housing Finance Ltd & Ors

..Respondents

ANJALI
TUSHAR
ASWALE

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ANJALI TUSHAR
ASWALE
Date: 2023.08.31
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***Mr. R. M. Haridas i/b Dilip Shinde, Advocates for the
Petitioner***

***Ms.Dimple Tejani i/b Sanjay Anabhawane,
Advocates for Respondent No.1.***

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

**CORAM : B. P. COLABAWALLA, J &
M. M. SATHAYE, JJ.**
DATE : AUGUST 28, 2023

P.C.

Though the above Writ Petition is filed by the Petitioner challenging the order passed by the District Collector, Palghar under Section 14 of the SARFAESI Act, 2002, the learned counsel appearing on behalf of the Petitioner has fairly stated that if some time is given for the Petitioner to vacate the secured asset, namely, Flat No.B-102, Ganesh Kunj Cooperative Housing Society Ltd, 1st Floor, Javdani Road, Land Mark-Hill Park, Virar (E), Tal.

Vasai, District-Palghar, on or before any date fixed by this Court, then the Petitioner shall not under any circumstances, challenge any action taken by the bank under the provisions of the SARFAESI Act, 2002 for sale of the secured asset. He submitted that some time is required because the Petitioner's children are under going an exam and thereafter there is the Ganpati Festival. It is in these circumstances that he requested that some time be granted for vacating the secured asset and handing over quiet, vacant and peaceful possession of the secured asset to the 1st Respondent-NBFC.

2 The learned counsel for the 1st Respondent-NBFC, taking these peculiar circumstances into consideration, has fairly stated that if the Petitioner is not going to challenge any further action taken by the bank under the SARFAESI Act, 2002 (in relation to the sale of the secured asset), the 1st Respondent-NBFC would have no objection if some time is granted to hand over possession of the secured asset.

3 Considering these peculiar circumstances, and purely on humanitarian grounds, we direct that the Petitioner, as per his own statement, shall hand over vacant, quiet and peaceful

possession of the secured asset to the Authorized Officer of the 1st Respondent-NBFC on 27th September, 2023 at 12.00 p.m.

4 If for any reason the aforesaid direction is not complied with, then, the Tahasildar (Respondent No.4) is directed to take physical possession of the secured asset from the Petitioner on 30th September, 2023 at 12.00 p.m. and thereafter hand over the same to the Authorized Officer of the 1st Respondent-NBFC. In order to ensure that the Tahasildar is able to take forcible physical possession of the secured asset without any hindrance, the Senior Police Inspector of the Local Police Station shall give all necessary assistance to the Tahasildar (including deputing adequate number of Police personnel) to ensure that physical possession of the secured asset is taken and thereafter handed over to the Authorized Officer of the Respondent No.1-NBFC.

5 It is made clear that if the necessary assistance is not given by the Police on the said date i.e. 30th September, 2023, then the Senior Police Inspector of the said Police station shall be liable for contempt.

6 The above Writ Petition is accordingly disposed of in the aforesaid terms. However, there shall be no order as to costs.

7 Even though we have disposed of the above Writ Petition, we place the above matter on Board on 3rd October, 2023 only for the purposes of reporting compliance.

8 The learned counsel appearing on behalf of the Petitioner has stated before the Court that the Petitioner has filed a Suit against Respondent No.2 in relation to this very property. He submitted that this order ought not to affect his rights against Respondent No.2. We clarify that this order does not in any way decide any of the disputes between the Petitioner and Respondent No.2 and those shall be decided on its own merits and in accordance with law. We, however, clarify that in the said Suit no injunction would be granted restraining the 1st Respondent-NBFC from either taking possession of the secured asset or from proceeding with the sale of the same.

9 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].