# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.10566 OF 2023

Panchavati Automobiles Pvt Ltd & Ors ..Petitioners

***Versus***

Tata Capital Financial Services Ltd ..Respondent



***Mr.Sidharth Samantaray***, *with Mr.Omkar Kanegaonkar i/b Vivek Phadke, Advocates for the Petitioners.*

***Mr.Firoz Bharucha***, *with Mr.Mayur Bhojwani i/b Manilal Kher Ambalal & Co, Advocates for the Respondent.*

***Mr. Sumati P. Bafna****, Petitioner No.2 is present.*

***Mrs. Nanda Sumari Prasad Bafna,*** *Petitioner No.3 is present.*

***Mr. Arjun Sumati Bafna,*** *Son is present.*

***Mrs. Ishita Bafna,*** *Daughter-in-law is present.*

***Ms.Leena Padhye*** *and Ms.Smita Shetty, Authorized Officers of Tata Capital Financial Services Ltd are present.*

**CORAM : B. P. COLABAWALLA, J &**
**M. M. SATHAYE, JJ.**
**DATE : SEPTEMBER 8, 2023**
**(in chambers)**

**P.C.**

The above Writ Petition is filed seeking to challenge the order passed by the learned CMM under Section 14 of the SARFAESI Act, 2002. The secured asset in question is Flat No.1, admeasuring 1150 sq.ft. built up area on the Ground Floor, together with open car parking space in the building known as "Sindhu" of the society known as "Shikhapuri CHSL, 87, Netaji Subhash Road, Mumbai 400 002 (for short the ***"secured asset***").

2 The above Writ Petition was urgently moved on 25th August, 2023 because possession of the secured asset was going to be taken. When we indicated that the Petitioners have an alternate remedy under Section 17 of the SARFAESI Act, 2002, the learned counsel appearing on behalf of the Petitioners fairly stated that the Petitioners were not opposing the Respondent-NBFC from taking possession of the secured asset but requested that they not be physically dispossessed and be allowed to occupy the secured asset as the Agent of the Authorized Officer. This request was made because the Petitioners wished to redeem the mortgage by making payment of the entire dues of the Respondent-NBFC.

3 On 25th August, 2023, there was some debate as to what was the exact amount due and payable to the Respondent-NBFC. According to the Petitioners, the dues of the Respondent-NBFC were Rs.7,72,39,222.95/-, whereas according to the Respondent-NBFC the dues payable were Rs.8,31,83,778.77/-. Be that as it may, on 25th August, 2023, the learned counsel appearing on behalf of the Petitioners stated that notwithstanding this difference, to show their *bonafides,* they were handing over to the Respondent-NBFC a Demand Draft of Rs.25 Lakhs and would pay another sum of Rs.25 Lakhs (by Demand Draft) on or before 31st August, 2023. Thereafter, a further sum of Rs.15 Lakhs would be paid on or before 7th September, 2023. Apart from the aforesaid payment, a payment Schedule for the entire dues was also agreed to in paragraph 4 of our order dated 25th August, 2023. We had kept the matter today so that the parties could resolve the dispute in relation to the exact amount due and payable by the Petitioners to the Respondent-NBFC.

4 Today we note that firstly, payments that were due on 25th August, 2023 (of Rs.25 Lakhs), on 31st August, 2023 (Rs.25 Lakhs) and on 7th September, 2023 (Rs.15 Lakhs) have been duly paid by the Petitioners to the Respondent-NBFC. Secondly, the

parties have now agreed that the total dues payable by the Petitioners to the Respondent-NBFC would be a sum of Rs.8 Crores. Thirdly, the parties have also agreed to a slight variation in the payment schedule that was set out in paragraph 4 of our order dated 25th August, 2023.

5 Considering the aforesaid consensus, with the consent of parties, we direct that the balance amount of Rs.7.35 Crores shall be paid by the Petitioners to the Respondent-NBFC as follows:-

i. Rs.1.75 Crores on or before 30th September, 2023;

ii. Rs.1.50 Crores on or before 31st October, 2023;

iii. Rs.1.50 Crores on or before 30th November, 2023;

iv. Rs.1.50 Crores on or before 31st December, 2023.

v. the balance amount of Rs.1.10 Crores on or before 2nd January, 2024.

6 It is agreed between the parties that in the event the balance amount of Rs.7.35 Crores is paid as per the Schedule set out above, without any default, then, the Respondent-NBFC shall release the secured asset from mortgage, execute the necessary

documents for cancellation thereof and also issue a No Dues Certificate to the Petitioners. The parties have further agreed that in the event there is a single default, the secured asset shall be vacated forthwith not only by the Petitioners but also by their son and daughter-in-law. All these parties have given written undertakings to that effect, and which are taken on record by this Court and marked as Exhibits ***Y, Y-1 & Y-2*** respectively.

7 If for any reason, despite these undertakings, the persons in occupation of the secured asset do not vacate the same, then, the Respondent-NBFC shall be at liberty to move the Marine Drive Police Station for securing quiet, vacant and peaceful possession of the secured asset. If such a request is made by the Respondent-NBFC to the concerned Police Station, the Senior Police Inspector of Marine Drive Police Station shall offer all assistance to the Respondent-NBFC [including deputing adequate number of Police personnel], to ensure that the Respondent-NBFC is in a position to take quiet, vacant and peaceful possession of the secured asset, failing which the said Senior Police Inspector shall be hauled up for contempt.

8 Both parties have stated before the Court that since this is the settlement arrived at between the parties, the Writ Petition can be disposed of in terms of this order. It is accordingly so ordered and the Writ Petition stands disposed of.

9 Though the Writ Petition is disposed of, since the next installment is due and payable on 30th September, 2023, we place this matter on 3rd October, 2023 for reporting compliance.

10 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 ].**