IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13233 OF 2016

Bank of India. .. Petitioner.
Versus
Rajendra Vitthal Shinde and Others. ..Respondents.

Mr. O. A. Das, Ms. Priya Nigwekar and Ms. Dhanshri Wakhure for the Petitioner.

Mr. J. B. Mishra and Mr. Dhananjay Deshmukh for Respondent Nos. 3 and 4.

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.
DATE : 24 FEBRUARY 2023.

P. C. :

Heard learned counsel for the parties.

2. The Petitioner is a secured creditor in respect of the property in question and has initiated the proceedings under section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short "the SARFAESI Act"]. The Respondent–Custom Authorities have also initiated the action against the owners of property in question under section 121 of the Customs Act, 1962 on the allegation that they were proceeds of smuggling activities.

3. The grievance of the Petitioner–secured creditor is that when the Petitioner proceeded to take action against the property in question under the SARFAESI Act, the Petitioner could not do so in view of the notice pasted on the property by the Respondent–Custom Authorities that the property is under attachment of the Custom Authorities and no steps be taken by the Petitioner.

4. The Petitioner contends that the Petitioner–bank being a secured creditor, has a priority of claim over the claim of Respondent – Custom Authorities. Learned counsel for the Petitioner in support of his contention relied upon the following decisions :

1] Punjab National Bank vs. Union of India & Ors [(2022) 7 SCC 260].

2] Jalgaon Janta Sahakar Bank vs. Jt. Commissioner of Sales Tax [(2022) 5 BCR 409].

3] UTI Bank Ltd vs. Dy. Commissioner of Central Excise Chennai [AIR-2007 Mad 118].

4] Tahsildar (RR) Taluk Office, Kollam & Ors. vs. Nizamudeen S. & Ors. [SCC Online 2023 KER 150].

5] Krishna Lifestyle Technologies Ltd vs. Union of India [2009 (Supp.) BCR 203].

6] M/s. Mani Laxmi Metal & Alloys Pvt. Ltd vs. State of Gujarat [AIR Online 2022 Guj 1155].

5. Since the Respondent–Custom Authorities are proceeding under the provisions of Customs Act, 1962, section 142A of the Customs Act, 1962 will have to be noticed. Section 142A reads thus :

> **"Section 142A. Liability under Act to be first charge .-**
>
> Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956 (1 of 1956), the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 and the Insolvency and Bankruptcy Code, 2016 be the first charge on the property of the assessee or the person, as the case may be."

The overriding effect of section 142A as regards the duty, penalty and interest under the Customs Act, 1962 is subject to the Central Act, State Acts provided in this section itself, which includes the SARFAESI Act. Therefore, the claim of Respondent–Custom Authorities for the overriding charge under section 142A of the Customs Act, 1962 itself makes an exception in respect of the SARFAESI Act. Therefore, learned counsel for the Petitioner is right in contending that the Petitioner would have the overriding priority over the charge of Respondent–Custom Authorities.

6. Learned counsel for the Respondent–Custom Authorities submits that though the Petitioner would have priority, it does not mean the Respondent–Custom Authorities have no claim at all against the property in question and the Petitioner should be subjected to the conditions if the Petitioner is proceeding to take measures under the SARFAESI Act to sell the property in question, so that, if any amount is balance over and above the claim of Petitioner, the other parties who may have claims, such as the Respondent–Custom Authorities, would not be prejudiced.

8. Learned counsel for the Petitioner states that the Petitioner bank would proceed to take measures under the SARFAESI Act and if any amount remains balance after satisfying the claim of Petitioner, the Petitioner is under a duty to distribute the balance amount as per the claims received. The statement made by learned counsel for the Petitioner on instructions is accepted. We permit the Petitioner to proceed to take measures under the SARFAESI Act in respect of the property in question. The Petitioner–Bank will, if such a request is received from the Respondent–Custom Authorities to inform them about the action taken by the Petitioner and the quantum of sale proceeds, will give necessary information to the Respondent–Custom Authorities.

9. With these statements made by the Petitioner which we accept, the writ petition is disposed of. Pending applications are disposed of.

10. Needless to state that the other parties who may have claim against the property in question have their remedies open.

(ABHAY AHUJA, J.) **(NITIN JAMDAR, J.)**