

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

**WRIT PETITION NO. 7562 OF 2021
WITH
COURT RECEIVER REPORT NO. 3 OF 2022
IN
WRIT PETITION NO. 7562 OF 2021**

Vipul Kantilal Chheda)...Petitioner

V/s.

Anand Rathi Global Finance Ltd and Ors.)...Respondents

WITH

WRIT PETITION NO. 1218 OF 2022

Suyash Outsourcing Pvt. Ltd.)...Petitioner

V/s.

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION NO. 1217 OF 2022

Suman Mantri & Anr.)...Petitioners

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION (ST) NO. 3465 OF 2022

Amer Savji Ravariya)...Petitioner

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION (ST) NO. 7755 OF 2021

Padmakar Bhaskar Jamsandekar & Ors.)...Petitioners

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION NO. 7563 OF 2021

Harbinder Singh Gulati & Anr.)...Petitioners

V/s

Union of India & Ors.)...Respondents

WITH

WRIT PETITION NO. 7569 OF 2021

WITH

INTERIM APPLICATION (ST) NO. 2860 OF 2023

Babulal Ranchod Devda)...Petitioner

V/s

Union of India & Ors.)...Respondents

WITH

WRIT PETITION (ST) NO. 23526 OF 2021

Dilip Gadadhar Santra & Anr.)...Petitioners

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION NO. 8575 OF 2021

Rutuja Aditya Pranjape & Ors.)...Petitioners

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION NO. 9117 OF 2021

Pankaj Manjunath Shetty & Anr.)...Petitioners

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH

WRIT PETITION NO. 9119 OF 2021

Vicky Suresh Sharma)...Petitioner

V/s

Anand Rathi Global Finance Ltd. & Ors.)...Respondents

WITH
WRIT PETITION NO. 9120 OF 2021

Kailash Punavasi Yadav)...Petitioner
V/s
Anand Rathi Global Finance Ltd. & Ors.)...Respondents

Mr. Ashish Dube, Advocate for the Petitioner in W.P.No.7562 of 2021.

Mr. Hemant Ghadigaonkar a/w. Pallabi Chatterjee, Advocate for the Petitioner in W.P.No.9117 of 2021, W.P.No.9120 of 2021 and W.P.(St.) No.3465 of 2022.

Mr. Nitin Raut a/w. Mr.G.P.Vas and Ms. Sunita Serrao i/b. P.Vas & Co., Advocate for the Petitioner in W.P.No.7563 of 2021 and W.P.No.7569 of 2021.

Ms. Nilima C.S.Sarvagod i/b. S.U.Pandey, Advocate for the Petitioner in W.P.No.9120 of 2021.

Mrs. Shruti D. Vyas, “B” Panel Counsel for the Respondent-State in all Writ Petitions.

Ms.Naveena Kumari, Advocate for the Respondent No.1 (UOI) in W.P.No.7563 of 2021 and W.P.No.7569 of 2021.

Ms. Sweta Shah i/b. Mr.Abhijit Kulkarni, Advocate for the Respondent (SRA) in W.P.No.7562 of 2021.

Mr. Nikhil Rajani i/b. M/s. V. Deshpande & Co., Advocate for the Respondent No.1 in W.P.No.1217 of 2022.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 6 FEBRUARY 2023

P.C.

Heard the learned Counsel for the parties.

2 A group of five Petitions of the Petitioners arising from the same project and same facts and circumstances had come up for consideration on 1 February 2023 in which the following order was passed :

“ Writ Petition (St.) No. 2863 of 2023 is not on board. Same is taken on board by way of praecipe.

2. Heard the learned Counsel for the parties.

3. The Petitioners are aggrieved by the action taken by the Respondent – Secured Creditor in approaching the Executive Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). The Petitioners had earlier filed Writ Petition No. 7562 of 2021 and other connected matters challenging the action taken by the Respondents under Section 14 of the SARFAESI Act. The Division Bench of this Court scrutinizes the matter as pointed out by the Respondents with the following objectives as reflected in paragraph 42 :-

“42. The endeavor of this Court has been to ensure

that the financial misdeeds in relation to the Project are exposed, the money trail unearthed and the culprits are brought to justice in accordance with law. All observations of this Court are only prima facie in nature. The rival contentions of the parties have not been adjudicated upon by this Court and all rights and contentions in that regard are expressly kept open to be adjudicated upon in appropriate proceedings at the appropriate stage.”

4. *Thereafter the Respondent– Secured Creditors have moved the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act, the Petitioners are before us by way of these Petitions.*

5. *The learned Counsel for the Petitioners sought to contend that the Petitions be entertained as there is a fraud committed by the Respondent – Developers and sought to rely upon the decision of the Hon’ble Supreme Court in the case of Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and Ors. [(1998) 8 SCC 1]*

6. *Having considered the purpose and object of the earlier order passed by this Court and having considered the settled position of law as laid down by the Supreme Court in the cases governing SARFAESI Act, we are of the opinion that the Petitioners will have to get their grievances redressed before the Debts Recovery Tribunal. The Hon’ble Supreme Court in the case of Union Bank of India v/s. Satyawati Tandon and Ors. (AIR 2020 SC 3413) after taking review of the earlier judicial pronouncements*

has held that since the SARFAESI Act is a complete Code, the writ jurisdiction ought not to be exercised.

7. *As regards the grievance made by the learned Counsel for the Petitioners that the attempt of the Respondent– Secured Creditor to apply to the District Magistrate under Section 14 of the SARFAESI Act is in violation of the status-quo is concerned, the learned Counsel for the Respondent – Secured Creditors pointed out that the order of status-quo was upon certain conditions. The learned Counsel for the parties have sought to debate before us whether these conditions are in fact satisfied or not. This is another area of factual adjudication that has arisen before us. Considering the totality of the circumstances and the position of law as above, we are of the opinion that appropriate course of action would be to defer the action of the Respondents for some time so that the Petitioners can agitate their grievance before the Debts Recovery Tribunal.*

8. *Accordingly, we dispose of the Writ Petitions directing the Respondent – Secured Creditors not to take physical possession of the flats involved in the Petition for a period of four weeks from today. All contentions of the parties including the one raised in the Petition are kept open to be agitated before the Debts Recovery Tribunal.*

9. *The Writ Petitions are disposed of in the above terms.*

10. *We make it clear that the protective order that we have passed will apply only in respect of the Petitioners who are before us.”*

3 We see no reason to take any different view. The Writ Petitions are accordingly disposed of in light of the order dated 1 February 2023 keeping all contentions of the parties open. The Respondent-secured creditor will not take physical possession of the flats involved in the Petitions before us for a period of four weeks from today. Writ petitions are accordingly disposed of.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

ARTI
VILAS
KHATATE

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by ARTI VILAS
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