

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3949 OF 2022

Kotak Mahindra Bank Ltd. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

WITH
INTERIM APPLICATION NO. 194 OF 2023
WITH
INTERIM APPLICATION NO. 195 OF 2023

Mr.Nikhil Rajani with Apoorva Kulkarni i/b. V.Deshpande & Co.
for the Petitioner.

Mr.A.A.Alaspurkar, AGP for Respondent Nos.1, 2, 4 and 5.

I.A.Nasikwala with Sujith Masal and H.A.Nasikwala
for the Intervener.

SANJAY
KASHINATH
NANOSKAR

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CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.

DATE : 9 January 2023.

P.C. :

Though the learned counsel for the Petitioner and the learned counsel for the Intervener have sought to address various issues, the scope of the provision from which the proceeding arises has to be kept in mind. The Petitioner is a secured creditor and has approached the Magistrate under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002. The Intervener, claiming to be the owner of the premises, is before us stating that he has already approached the Debt Recovery Tribunal and various issues arise for adjudication.

2. Section 14 of the SARFAESI Act does not contemplate detailed adjudication and upon the ingredients of section 14 being satisfied, the Magistrate is obliged to assist the secured creditor in taking possession.

3. Since the Intervener is already before the DRT where the Petitioner is also a party respondent, the correctness of the action taken by the Petitioner under section 14 of the SARFAESI Act will have to be decided by the DRT. In order to give an opportunity to the Intervener, we direct that the concerned Magistrate will proceed as per law after the period of three weeks, so that the Intervener, if he wishes to seek any restraint order from the DRT, is able to do so, on its merits.

4. With the aforesaid observations, writ petition is disposed of.

5. In view of disposal of writ petition, interim applications do not survive and stand disposed of accordingly.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)