



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.6781 of 2023

Mr. Jitendra Rameshwar Vadurkar Versus TJSB Sahakari Bank Limited

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's order

Shri G.L. Agrawal, Counsel for Petitioner.

Shri V.K. Kolte, Counsel for Respondent No.1.

Shri N.R. Rode, Assistant Government Pleader for Respondent No.2.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : 6th OCTOBER, 2023.

1. Leave to amend the cause title of the writ petition is granted. Amendment be carried out forthwith.
2. The writ petition is mentioned in view of the urgency sought to be made out by the petitioner contending that pursuant to the order passed by the Debts Recovery Tribunal on 5-10-2023, the possession of the mortgaged property, which is a residential house, is being taken over by the respondent No.1. It is submitted by the learned counsel for the petitioner that on 8-5-2023, the learned Presiding Officer had passed an order below Exhibit 7 recording the submission made on behalf of the respondent No.1 that seven days' prior notice would be given to the petitioner prior to taking possession of the mortgaged property. Such notice was sought to be issued to the petitioner on 25-9-2023 by the Naib Tahsildar. By referring to the track consignment report of the Postal Authorities, it is indicated that the aforesaid notice was dispatched from Amravati on 1-10-2023 and the said notice was delivered to the petitioner on 3-10-2023. The possession of the mortgaged property was scheduled to be taken today. On this basis, it is submitted that the notice period is not seven clear days but shorter than that time. In these facts, the petitioner prays for grant some time to file an appeal before the Debts Recovery Appellate Tribunal and till such time the possession of the petitioner be protected.
2. This request is opposed by the learned counsel for the respondent No.1 by submitting that the Tribunal has rightly noted that the outstanding loan amount was Rs.40,32,654.59. Without indicating any manner of repayment, the request

of the petitioner was not liable to be accepted. The order dated 5-10-2023 having been passed after hearing the petitioner, no interference was called for. Without prejudice to the aforesaid, it is submitted that if the writ petition is entertained, the petitioner should be directed to indicate his *bona fides* for seeking protection.

3. We have perused the documents placed on record. *Prima facie*, the order dated 8-5-2023 refers to the submission made on behalf of the respondent No.1 that the notice of seven days would be given prior to taking possession. The track consignment report indicates service of notice on the petitioner on 3-10-2023 and the possession of the mortgaged property is to be taken today which is prior to seven days.

4. In the aforesaid facts, we find that the following order would serve the interests of justice :

(i) The petitioner shall within a period of ten days from today deposit an amount of Rupees Ten Lakhs with the respondent No.1- Bank, which deposit would be without prejudice to the rights and contentions of the rival parties.

(ii) Within the aforesaid period, the petitioner is free to file an appeal before the Debts Recovery Appellate Tribunal and make a prayer for interim relief therein.

(iii) Subject to compliance of the aforesaid directions, the action of taking over possession shall be deferred for a period of ten days from today.

(iv) It is clarified that if there is no compliance of the order of deposit, the notice dated 25-9-2023 issued by the Naib Tahsildar can be got executed by the respondent No.1- Bank without any further notice to the petitioner.

5. Keeping all contentions of the rival parties on merits open, the writ petition is disposed of.

6. The learned Assistant Government Pleader to communicate this order to the respondent No.2.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)