



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO. 7721 OF 2024

MOTILAL OSWAL HOME FINANCE LIMITED
THROUGH ITS AUTHORIZED OFFICER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for the Petitioner : Mr. Deshpande Shreyas, Mrs. Priyanka Deshpande
& Navin Arora

AGP for Respondents/State : Mr. N.S. Tekale

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CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

DATE : 27th August, 2024

PC. :-

1. This matter was heard yesterday. We noticed that the Investigating Officer was not doing his duty. The learned AGP kept the I.O. present after the lunch session, for instructions. Since we noticed that there are glaring lapses on the part of the I.O., we directed the learned AGP to take instructions.

2. Today, the SHO of Satara Police Station as well as the concerned I.O. - Shri Dilip Dhenu Rathod, Head Constable, are present in the Court Hall to instruct the learned AGP.

3. The Petitioner has put-forth prayer clause-B, C and D as under:

“b) That this Hon'ble Court be pleased to issue an appropriate writ of mandamus or any other appropriate writ, or order or direction in the like nature, directing the respondent No.1 and 2 by restitution the possession in favour of the Petitioner of the said property located at Flat No. A1, First Floor, Plot No. 41, Gut no- 36, S.K. Pride Satara, Near Kamalnayan Bajaj Hospital, Dist- Aurangabad and the secured asset which is illegally in the possession of the Respondent No. 3 and 4.

c) That this Hon'ble Court be pleased to issue an appropriate writ or order, declaring that the respondent No. 3 and 4 has violated the mandate of SARFAESI Act.

OR

d) That this Hon'ble Court be pleased to alternatively appoint Advocate Court Commissioner or Court Receiver or Tehsildar as this Hon'ble Court deem fit and proper and, inter-alia, directing them to take appropriate steps for repossession of the said property located at Flat No. A1, First Floor, Plot No. 41, Gut no- 36, S.K. Pride Satara, Near Kamalnayan Bajaj Hospital, Dist- Aurangabad and the secured asset which may be found in the possession of the Respondent No. 3 and 4. with reasonable force which includes the breaking open of lock (s), wherever necessary and also direct the concerned Police Station i.e. Respondent No.2 to provide help/assistance in taking physical possession of the Secured Asset;”

4. The learned advocate for the Petitioner has relied upon the orders delivered by this Court on 06.03.2024, in Writ Petition Nos.2470/2024, 2475/2024, 2490/2024 and 2495/2024 (Motilal Oswal Home Finance Limited V/s. State of Maharashtra and Ors.) and the order dated 17.01.2024, delivered by this Court at the Principal Seat, in Writ Petition No.289/2024 (State Bank of India V/s. State of Maharashtra & Ors.)

5. It is undisputed that after the District Magistrate passed an order under Section 14 of the SARFAESI Act on 20.01.2022. The Tahsildar delivered the physical possession of the secured assets to the Petitioner, on 22.11.2023. Thereafter, in between 22.11.2023 and 14.12.2023, the borrowers Shri Pasha Babu Mohammad and Shainaz Mohammed Babu, are said to have broken the lock of the property (Flat No.A/1, First Floor, S.K. Pride, Plot No.41, Satara Parisar, Ch. Sambhajinagar) and have taken the possession of the flat, forcefully. After getting the knowledge of this development, an FIR bearing No.0306/2024 was registered with the Satara Police Station by the Petitioner on 10.07.2024.

6. The learned AGP informs us today that the I.O. had gone to the flat. He saw that it was occupied by the relatives of the borrowers/accused. The accused were absconding. The I.O. did not interrogate or take down the statements of those who had forcibly occupied the flat. Instead, statements of the employees of the Petitioner - Financial Institution were recorded. It is more than 45 days that the statement of the illegal occupants of the flat have not been recorded.

7. The learned AGP submits that the I.O. does not have any explanation as to why he had not recorded the statements of the trespassers. There is no further investigation and for which the I.O. has no explanation.

However, the I.O. is seeking pardon of this Court and desires to file an affidavit tendering an apology with an assurance that, henceforth, he will perform his duties properly. The apology affidavit filed by the I.O. dated 27.08.2024, is marked as 'X' for identification.

8. In view of the above, we direct the SHO, Satara Police Station to appoint a new I.O. with regard to FIR No.0306/2024. The Tahsildar-Respondent No.1, would take the assistance of the Satara Police Station and ensure that the possession of the said flat is delivered to the Petitioner by following the due procedure laid down in law, within 45 days from today.

9. With the above directions, **this Writ Petition is disposed off.**

10. The SHO shall convey this order to the Commissioner of Police and an entry be made in the service book of the concerned I.O. Shri D. D. Rathod.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]