IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 8021 OF 2023

M/S JEEV URJA PVT LTD THROUGH ITS DIRECTORS VASANT SHANKARRAO KULKARNI AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS DISTRICT MAGISTRATE COLLECTOR AND OTHERS

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Mr. S. S. Kazi h/f Mr. Varun Singh, Advocate for the Petitioners.
Mr. K. B. Jadhavar, AGP for Respondents-State.
Mr. A. M. Inamdar, Advocate for Respondent Nos.1 to 2.
Mr. Balraj B. Kulkarni, Advocate for Respondent No.3.
Mr. D. B. Kale, Advocate for Respondent Nos.4 and 5.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 07th AUGUST, 2024.

P.C.:-

1. The petitioners approached this Court under Article 227 of the Constitution of India impugning order dated 27.02.2023 passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') by the District Magistrate and consequential notice dated 03.05.2023 issued by respondent no.2-Tahsildar.

2. Mr. Kazi, learned Advocate appearing for the petitioners submits that the District Magistrate was misrepresented by the respondent-Bank while obtaining impugned order. The false statement was made in the application that no proceeding in subject matter is pending. Although challenge to the notice under Section 13(4) of the SARFAESI Act issued by the Bank seeking physical possession of the secured asset was assailed before DRT, Aurangabad in S.A. No.310/2022 invoking Section 17 of the

SARFAESI Act, the impugned order under Section 14 was secured by the Bank.

3. Mr. Kazi would submit that District Magistrate had not issued notice to the petitioners nor granted any opportunity of hearing. Further District Magistrate was obliged to pass order within 30 days of filing the application, however, same has been passed after five months. He would urge that impugned order is liable to be quashed and set aside being defiance of the principles of natural justice and procedure contemplated under SARFAESI Act. To buttress his contentions he relies upon observations of the Supreme Court of India in cases of ***Mardia Chemicals Ltd. and Others Vs. Union of India and Others***[1], ***Shree Shantinath Steels and Another Vs. Union of India and Others***[2] and ***Hindon forge Private Limited and Another Vs. State of Uttar Pradesh through District Magistrate, Ghaziabad and Another***[3].

4. I have considered submissions on behalf of the petitioners. Before dealing with the contentions raised, it would be appropriate to refer to the recent judgment of the Supreme Court of India in case of ***M/s. South Indian Bank Ltd. and Others Vs. Naveen Mathew Philip and Another Etc. Etc.***[4], wherein in paragraph no.17, the Supreme Court has cautioned the High Courts as under:

> *"We shall reiterate the position of law regarding the interference of the High Courts in matters pertaining to the SARFAESI Act by quoting a few of the earlier decisions of this Court wherein the said practice has been deprecated while requesting the High Courts not to entertain such cases."*

1 **(2004) 4 Supreme Court Cases 311.**
2 **2024 SCC OnLine SC 1864.**
3 **(2019) 2 SCC 198.**
4 **(2023) 6 SCALE 224.**

5. Secondly Division Bench of this Court in case of ***Nageshwar Rao S/o. Rajshekhara Rao Neti and Others Vs. Collector, Collector office and Others***[5] giving reference to the law laid down by Supreme Court in case of ***United Bank of India Vs. Satyawati Tondon and others***[6] observed that remedy under Section 17(1) of SARFAESI Act is of wide import and the person aggrieved by orders passed under Section 14 of the SARFAESI Act can avail said remedy and also observed that writ petitions against orders passed under Section 13(4) or Section 14 of the SARFAESI Act shall not be entertained, unless alternate remedy is exhausted. In case of ***Hari Trading Corporation Vs. Bank of Baroda***[7], the Division Bench of this Court observed that the question of giving hearing to the borrower at the stage of taking possession does not arise, as he has remedy under Section 17 of the SARFAESI Act. Even judgment relied upon by the petitioners in case of ***Hindon forge Private Limited and Another*** (supra) lays down similar preposition of law that remedy under Section 17 of the SARFAESI Act can be availed assailing action under Section 13(4) or 14 of the SARFAESI Act.

6. Keeping in mind the aforesaid exposition of law, challenge raised in this petition cannot be entertained, firstly for the reason that impugned order dated 27.02.2023 is already executed and possession of the mortgaged property is handed over to the creditor and secondly, the petitioners had availed remedy before the DRT to assail the notice under Section 13(4) of the SARFAESI Act in S.A. No.310/2022. However, the same has been already dismissed by DRT. On specific query by this Court Mr. Kazi informed that the petitioners have not assailed the order of DRT before Appellate Tribunal. In that view of the matter, by granting liberty in favour

5 **2023 (2) Bom.C.R. (Cri.) 228.**
6 **2010 (8) SCC 110.**
7 **2015 (3) BankCas 284.**

of the petitioners to avail appropriate remedy as permissible under law, writ petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2024