



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1100 OF 2023

**INCRED FINANCIAL SERVICES LTD.
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Shri S.S. Gangakhedkar, Advocate for the Petitioner.
Shri P.K. Lakhotiya, AGP for Respondents 1 to 4/State.
Shri K.J. Suryawanshi, Advocate for Respondent 5.

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**CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.**

DATE :- 13th March, 2024

Per Court :-

1. On 06.02.2024, this Court had passed the following
order:-

2. *“We have heard both the sides for a while.
It transpires that it is a composite writ petition. In
prayer clause ‘B’, the petitioner which is a secured
creditor, is seeking directions for launching
criminal prosecution against the respondent no. 5
who is a borrower, for the latter’s alleged act of
illegally entering into possession of the secured
asset, possession of which was handed over to the
petitioner in execution of the order passed by the
District Magistrate under Section 14 of the
Securitisation and Reconstruction of Financial
Assets and Enforcement of Security Interest Act,
2002.*
3. *By prayer clause ‘C’ the petitioner is seeking writ
of mandamus for restitution of possession taken*

over by the respondent no. 5-borrower illegally, in the light of the decision in the matter of *The Nashik Merchant Co-operative Bank Vs. The District Collector, Jalna and others* in Writ Petition No. 10069/2022, decided on 28.02.2023.

4. The prayer clauses 'B' and 'C' in the writ petition read as under :

“(B) By issuing writ of mandamus or any other appropriate order or direction in the nature of writ, the respondent No. 2 to 4 be directed to initiate appropriate legal action against the respondent no.5 and/or the concerned persons who acted on their behest for taking back possession illegally by initiating criminal prosecution.

(C) By issuing writ of mandamus or any other appropriate order or direction in the nature of writ, the respondent No. 2 to 4 be directed for restitution of possession with the petitioner with immediate effect which is forcefully taken back by the respondent No.5 with the aid of 50 to 60 persons early in the morning of 24.07.2023.”

5. Though the writ petition has been styled and registered as a criminal writ petition, the current roster does not categorize the matters of this kind where one prayer is for setting the criminal law in motion, whereas the other one is seeking to enforce the civil rights.
6. Admittedly, the relief claimed in the prayer clause 'B' stands satisfied in view of the launching of prosecution. Only the prayer clause 'C' survives.
7. Registrar (Judicial) shall take appropriate steps for assignment of the matter to a particular bench.”

2. On 09.02.2024, the following order was passed:-

- “1. Learned AGP puts in appearance for respondent Nos.1 to 4 and waives service of notice. Mr. K.J. Suryawanshi, learned advocate puts in appearance for respondent No.5 and waives service.
2. Learned counsel for the respondent No.5 has submitted that possession of the entire property is

taken under some understanding by the petitioner, except the land, over which currently a school is being run. Learned counsel for the respondent No.5 could not establish ownership over the part of the land over which school is said to be running. It is, however, stated that currently certain students are studying there and the examinations have commenced from 1st February, 2024 which are to last till 26th March, 2024.

3. *In the aforesaid view and also having regard to the overall facts and circumstances of the case, stand over to 12th February, 2024, high on board, to enable the learned counsel for respondent No.5 to seek instructions as to, after completion of the examination of the students in the school, how much time the respondent No.5 would require, to hand over possession of the land, over which the school is running.”*

3. The learned Advocate for the Petitioner clarifies that the words “under some understanding” appearing in the third line of paragraph 2 of the order dated 09.02.2024, have been inadvertently typed as there was no such understanding between the Petitioner and Respondent No.5.

4. The learned Advocate representing Respondent No.5, that has mortgaged the property to the Petitioner, has tendered an affidavit in reply dated 12.02.2024. A solemn statement is made in paragraph 6 that Respondent No.5 will handover possession of the school classrooms and the office, in the month of May, 2024. He clarifies, on instructions, that the

possession of the school classrooms and office would be handed over to the Petitioner on or before 10.05.2024. Not a single day extension would be sought.

5. In view of the above, **this Writ Petition is disposed off.**

6. Respondent No.5 would handover possession as described in the order below Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Barring movables, Respondent No.5 would leave the entire building intact and ensure that there is no damage caused to the internal walls/interiors and the structure or exteriors of the building.

kps (R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)