IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11600 OF 2023

Shakuntala w/o Prakash Shinde,
Age: 36 Years, Occu- Business,
R/o: At post Martala, Tq. Loha
Dis. : Nanded ..Petitioner

Versus

1. Omprakash Devra Peoples
Co-operative Bank Ltd., Hingoli,
Branch at New Mondha, Nanded,
Tq. & Dist.Nanaded
Through its Authorised Officer.

2. The District Collector,
Collector Officer,Nanded
Tq. & Dist. Nanded

3. The Tahasildar,
Tahasil Office, Loha Tq. Loha,
Dist. Nanded. ..Respondents

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Mr. D. A. Mane, Advocate for Petitioner.
Mr. P. S. Agrawal, AGP for Respondent No.1.
Mr. K. B. Jadhavar, AGP for Respondent Nos.2 and 3.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd JULY 2024.

ORDER:-

1. The petitioner impugns order dated 28.12.2021 passed the District Collector, Nanded in proceeding CR-98/2021 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act, 2002').

2. Mr. Mane, learned Advocate appearing for petitioner submits that petitioner had availed CC loan for the purpose of expansion of her business in the year 2016. In deference to her application, loan

of Rs.14,00,000/- was disbursed against security i.e. mortgage of Grampanchayat House No.835. The petitioner regularly paid loan installments. However, during Covide-19 pandemic situation, business remained closed and repayment of loan installments was halted. The respondent-Bank declared petitioner's account as NPA. The Bank initiated proceedings under Maharashtra Co-operative Societies Act for recovery of the amount. Consequently, recovery certificate came to be issued. Thereafter, Bank approached District Collector under Section 14 of the SARFAESI Act, 2002 for securing possession of mortgage property. The District Collector under impugned order dated 28.12.2021 directed recovery possession of the property from petitioner and handing over the same to the Authorized Officer of the Bank. Thereafter, petitioner deposited amount of Rs.7,70,000/- till 18.08.2023. Thereafter, the petitioner approached this Court and this Court by order dated 15.11.2023 granted interim stay to the execution of the impugned order. He would submit that petitioner is willing to deposit entire loan amount. However, needs accommodation of few months. The petitioner is not intentional defaulter. She is a businesswoman and for the reasons beyond her control, default in repayment of loan has been caused.

3. Per contra, Mr. Agrawal, learned Advocate appearing for respondent no.1-Bank submits that Writ Petition itself is not maintainable. The order passed under Section 14 of the SARFAESI Act, 2002 cannot be subjected to Writ jurisdiction. He would further submit that petitioner is not disputing liability towards loan, but using remedy of Writ only for the purpose of killing time. Such litigation deserves to be deprecated.

4. Having considered submissions advanced, it is apparent that petitioner had availed loan. On her default, she was served with notice under Section 13(2) of the SARFAESI Act, 2002 and thereafter, proceeding under Section 14 of the SARFAESI Act, 2002 was initiated before the District Collector. The petitioner do not dispute that she availed loan and notice under Section 13(2) of the SARFAESI Act, 2002 was served upon her. Consequently, the District Collector exercised his powers and issued directions for recovery of possession of secured asset and hand over the same to the Bank. It is well settled that Writ Court would be slow in entertaining any challenge to the order passed under Section 14 of the SARFAESI Act, 2002. The Supreme Court of India in case of ***M/s. South Indian bank Ltd. & Ors. Vs. Naveen Mathew Philip & Anr. Etc.*** in ***Civil Appeal No.002861-002862 –2023*** dated ***17.04.2023*** as well as this Court at Nagpur Bench in case of ***Nageshwar Rao S/o. Rajshekhara Rao Neti and Others Vs. Collector, Collector Office and Others***[1] dealt with the subject matter and observed in paragraph nos.21 and 22 as under:

> *"21. Section 13 of the SARFAESI Act contains exhaustive mechanism for enforcement of secured interest. A creditor may enforce the secured interest without intervention of the Court or the Tribunal in accordance with the provisions of the SARFAESI Act. In terms of Section 14 of the SARFAESI Act, the secured creditor can file an application before the District Magistrate for taking possession thereof. On such application, the District Magistrate is obliged to take possession of such assets and forward the same to the secured Creditor. Section 17 of the SARFAESI Act speaks about the remedies available to any person including borrower who felt aggrieved by the action taken by the secured creditor under Section 13(4) of the SARFAESI Act.*
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> *22. In the decision of the Supreme Court in case of Satyawati (supra), it has been specifically ruled that term "any person" used in Section 17(1) is of wide import. Herein the petitioner is obviously aggrieved by the order passed*

1 **2023 (2) Bom.C.R. (Cri.) 228.**

under Section 14 of the SARFAESI Act which very much flows from the order passed under Section 13(4) of the SARFAESI Act, therefore they can avail said remedy. The Supreme Court clarified that any person who may be affected by the action taken 16 4wp762.22.odt under Section 13(4) of the SARFAESI Act or Section 14 of the SARFAESI Actn can avail remedy under Section 17 of the SARFAESI Act. Moreover, in above decision, the Supreme Court has cautioned for not to entertain writ petition without exhausting statutory remedy."

5. Pertinently, petitioner never challenged notice under Section 13(2) of the SARFAESI Act, 2002 before the competent Court and approached this Court in the month of August 2023 challenging order passed by District Magistrate under Section 14 of the SARFAESI Act, 2022 in the month of December 2021, when execution of impugned order passed was at last stage. No jurisdictional error is brought to the notice of this Court, so as to invoke Writ jurisdiction under Article 227 of the Constitution of India. Hence, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024