2024:BHC-AUG:5028-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 329 OF 2024

OSMANABAD JANTA SAHAKARI BANK LTD THROUGH ITS AUTHORIZED OFFICER
VERSUS
THE COLLECTOR DISTRICT MAGISTRATE AND OTHERS

Mr.S.B.Choudhari, Advocate for the Petitioner.
Mr.S.B.Narwade, AGP for Respondent Nos. 1 to 4.

(CORAM : RAVINDRA V. GHUGE AND R.M. JOSHI, JJ.)

DATE : MARCH 5, 2024

PER COURT :

1. Notice was issued on 25.01.2024. *Humdast* was granted to serve Respondent Nos. 5 and 6. Since Respondent Nos. 5 and 6 were not served until 12.02.2024, on the request of the Petitioner, we reissued notice to the said Respondents, returnable on 05.03.2024 and permitted the Petitioner to publish the notice in “Daily Punyanagari”, which has a wide circulation in the Beed District. The notice has been published by the Petitioner in the newspaper and the copy of the original newspaper is placed on record in this proceeding. The Court Master called out the names of Respondent Nos. 5 and 6 in the open

Court. None have caused appearance, either in person or through an Advocate. In this backdrop, we have proceeded with the hearing in this matter.

2. The only grievance of the Petitioner Bank is that after Section 14 of the SARFAESI Act order was passed by the District Magistrate, the Petitioner Bank was put in possession on 10.03.2023. The Petitioner put up the property, which was a secured asset, for auction on 31.07.2023. The successful bidder has deposited 25% amount. On 25.09.2023, the Manager of the Petitioner, upon visiting the property, noticed that Respondent Nos. 5 and 6 had entered the property by breaking the seal. In this backdrop, the Petitioner has approached the District Collector, once again for seeking restoration of the physical possession of the property.

3. The learned AGP has contended that Respondent No.5 is before the Debt Recovery Tribunal at Aurangabad in SA No.123/2023 and the Tribunal has directed status quo to be maintained.

4. We find that the proceeding before the DRT is after the

auction proceeding was initiated by the Bank and the successful bidder has deposited 25% of the amount. The argument recorded in the order dated 05.10.2023 by the Tribunal indicates the contention of the Petitioner Bank that it had already sold the property on 31.07.2023. The learned Advocate for the Petitioner contends that the only dispute before the Tribunal is with regard to the auction sale and the status quo order is not with regards to physical possession of the property.

5. Be that as it may and keeping in view the contention of the Petitioner, no person can take law into his own hands. If the order u/s 14 was implemented and the Bank was put in physical possession, the act of forcibly breaking the seal and taking over the possession, is a criminal act. Respondent Nos. 5 and 6, obviously could not have forcibly taken possession of the property, which they were divested of by the due procedure laid down in Law. If they desired to take back the possession, they could have only adopted the legal procedure by filing an application u/s 17 of the SARFAESI Act.

6. The learned Advocate for the Petitioner has drawn our attention to the judgment dated 28.02.2023 delivered by this Court in

WP No.10069/2022 (The Nashik Merchant Co-operative Bank Vs. the District Collector, Jalna and Others), wherein this Court has relied upon various orders passed by this Court in **Bank of Baroda Vs. The State of Maharashtra and Others WP No.8674/2021 dated 24.02.2022,** the order of the Division Bench of Andhra Pradesh High Court in **M/s Sri Balajai Centrifugal Castings Vs. M/s ICICI Bank Limited [(2018) SCC online Hyderabad 368**, the order passed by the High Court of Kerala dated 18.05.2022 in **A.A. Kumaran Vs. Superintendent of Police, Thrissur and Others in WP (Civil) No.5875/2022** and the order of the Madhya Pradesh High Court passed in **Smt. Mishri Bai w/o Late Shri Nirmal Kumar and Others Vs. Shubh Laxmi Mahila Co-operative Bank Limited.** It is concluded that the District Magistrate has the powers to once again execute the order passed u/s 14 and restore the possession of the secured creditor. Moreover, the order passed by the learned Tribunal is not with regard to the possession of the property, but relates to the auction sale of the property.

7. In view of the above, we direct the District Collector, Beed to issue appropriate directions to the Tahsildar, who alone shall proceed to recover the possession from Respondent Nos. 5 and 6 and restore the

same to the Petitioner / Bank by following the due procedure laid down in Law. Needless to state, no further steps to create third party interest would be initiated with reference to the said property by the Bank, in view of the interim order passed by the Tribunal.

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

(R.M.JOSHI, J.) **(RAVINDRA V. GHUGE, J.)**