IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11438 OF 2023

RAJARAMBAPU SAHAKARI BANK LTD.
THR. ITS AUTHORIZED OFFICER
RAVINDRA R LOLAGE ..PETITIONER
VS.
STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

Adv. Abhishek T. Ingale a/w. Adv. Priyanka Babar i/b. Adv. Tejpal Ingale for petitioner.
Ms. Kavita N. Solunke, AGP for respondent nos. 1 to 4 – State.
Adv. Pradeep Rajagopal a/w. Adv. Drishti Shah i/b. Adv. Rekha Rajagopal for respondent nos.5 and 6.

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 19th August 2024.

P.C. :

1. Rule. Rule is made returnable forthwith. Heard learned counsel for the parties.

2. The challenge raised in this Writ Petition is to the order dated 31st January 2023 passed by the Additional District Magistrate, Kolhapur, thereby refusing to act on an application filed by the petitioner – creditor on 15th November 2022 under Section 14 of the of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'the said Act').

3. It is the grievance of the petitioner that pursuant to an initial order dated 15th September 2022 passed under Section 14 of the said Act, possession was delivered on 2nd November 2022. However, on 9th November 2022, the respondent nos. 5 to 7 illegally re-entered into possession. This resulted in a First Information Report being lodged by the petitioner on 10th November 2022. In that background, the second application under Section 14 of the said Act came to be filed.

4. We have heard the learned counsel for the parties and we have perused the documents on record.

5. In our view, the responsibility of the Additional District Magistrate to entertain a subsequent application filed under Section 14 of the said Act is now well settled. This Court at the Aurangabad Bench in Writ Petition No.10069 of 2022 (*The Nashik Merchant Co-operative Bank (Multi State Scheduled Bank) Versus The District Collector, Jalna and Others)* has by judgment dated 28th February 2023 held that the Tahsildar is required to re-execute the initial order passed under Section 14 of the said Act in case there has been a trespass on the secured assets by the borrower after delivery of possession. Similar view has been taken in Writ Petition No.6805 of 2023 (*Kotak Mahindra Bank Ltd. & anr. Versus State of Maharashtra & Ors.)* to which one of us (Rajesh S. Patil, J.) was a Member.

6. In view of the aforesaid, we find the petitioner entitled to relief. At this stage, the learned counsel appearing for the respondent nos. 5 to 7, on instructions, submits that the said respondents desire to settle the dues of the Bank so as to retain the subject property. We find that the act of respondent nos. 5 to 7 of taking forcible possession is not in accordance with law. However, since the secured asset is a residential premises, time of fifteen days is granted to the said respondents to peacefully hand over possession of the subject property to the petitioner. In case, peaceful possession is handed over by the said respondents within a period of fifteen days, they are at liberty to approach the petitioner with a written proposal for clearing the dues of the petitioner. If such request is made, the petitioner is free to consider the same in accordance with law. Till such time, the proposal is considered, third party rights shall not be created in the subject property.

If the respondent nos. 5 to 7 fail to hand over peaceful possession as directed, the respondent nos. 2 and 3 shall take immediate steps to re-execute the initial order dated 15th September 2022 passed under Section 14 of the said Act. In addition, such breach would also attract action for disobedience of said direction.

7. Rule is disposed of in the aforesaid terms. No order as to costs.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**