IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3476 OF 2024

ADINATH CO-OPERATIVE BANK LTD.
ICHALKARANJI, DIST. KOLHAPUR ..PETITIONER
VS.
THE STATE OF MAHARASHTRA,
THR. THE DISTRICT MAGISTRATE &
COLLECTOR, KOLHAPUR & ORS. ..RESPONDENTS

Mr. Sandeep S. Koregave for the petitioner.
Mr. N. C. Walimbe, Additional Government Pleader with Mrs. M. S. Srivastava, Assistant Government Pleader for the respondent – State.

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

DATE : 9th OCTOBER 2024.

P.C. :

1. Rule. Rule made returnable forthwith and by consent of the parties heard finally.

2. By the present Writ Petition the petitioner – a financial institution is seeking directions to respondent nos. 1 to 3 to restore and hand over re-possession of the “secured assets” viz. N.A. Plot No.3 and 4 of Gat No.727 of village Mouje Shahapur, Taluka Hatkanangale, District Kolhapur.

3. The facts of this case reveal that the petitioner – a co-operative bank registered under the Maharashtra Co-operative Societies Act, 1960 (for short 'the M. C. S. Act') had granted cash credit facilities to respondent nos.4 and 5 (borrowers) by mortgaging the secured assets. The respondent nos.6 and 7 (borrowers) also obtained loan from the petitioner by mortgaging the same secured assets. The respondent nos.4 to 7 had obtained loan of Rs.20 lakhs from the petitioner by signing promissory notes, continuing security letter, letter of hypothecation agreement, letter of lien and set-off, consent letter and then petitioner executed registered Mortgagee Deed from the borrowers. The petitioner transferred cash credit loan of Rs.2,50,000/- to respondent nos.6 and 7 accounts respectively. Since there was default in repayment of cash credit facilities, the accounts of the respondent nos. 4 to 7 (borrowers) were classified as "Non Performing Assets" (NPA). The petitioner got the recovery certificate under Section 101 of the M. C. S. Act, on 30th September 2016 and 30th December 2017. The petitioner attempts to get possession of the secured assets failed as the respondent nos. 4 to 7 obstructed. Hence, the petitioner issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI Act') calling upon the borrowers to pay a sum of Rs.10,54,823/- for loan Account No.301-386, and Rs.10,51,753/- for loan Account

No.301-387 due and payable as on 29th November 2017 within 60 days along with interest thereon. As the respondent nos. 4 to 7 failed and neglected to make payment of said amount to the petitioner, hence, petitioner sent notice under Section 13(4) of the SARFAESI Act to respondent nos. 4 to 7 to take possession. Accordingly, on 4th April 2018, the petitioner took possession of the secured assets.

4. The petitioner also sent notice under Rules 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002 to the respondent nos.4 to 7. The respondent nos. 4 to 7, by their reply denied the notice u/s. 13(4) and the possession panchanama. The petitioner, thereafter, published public notice for sale of secured assets, in two newspapers. The respondent nos.4 to 7 then broke the lock of secured assets and stole the power loom and sold to somebody. The petitioner realising the said facts filed complaint before Police Station Shahapur, District – Kolhapur and also before Superintendent of Police, Kolhapur, but they have not taken any action.

5. As the respondent nos.4 to 7 obstructed to take physical possession and not paid dues amount, an application under Section 14 of the SARFAESI Act was filed by the petitioner. The said application under Section 14 was allowed and the respondent no.3 -

Mandal Officer, Kabnoor, Taluka – Hatkanangale, District Kolhapur was directed to take physical possession of the secured assets with help of the police and hand over the same to authorized officers of the petitioner. The petitioner applied to respondent no.3 for seeking possession under the said order of the respondent no.1. The respondent no.3 had sent many notices for seeking possession from the respondent nos. 4 and 5. The petitioner also followed up with the office of respondent nos.1 to 3, seeking necessary assistance for repossession of the secured assets. However, according to the petitioner, no further action has been taken by the respondent nos. 1 to 3. The petitioner hence has filed the present Writ Petition seeking a necessary direction for taking back physical possession of the secured assets by respondent no.3 and handing over the same back to the petitioner.

6. Mr. Sandeep S. Koregave, learned counsel for the petitioner submitted that respondent nos.1 to 3 should forthwith remove the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. So also, the respondent nos. 1 to 3 should initiate prosecution against the trespassers/ borrowers. Mr. Koregave relied upon the decision of Division Bench of this Court (Aurangabad Bench) in the case of the *Nashik Merchant Co-operative*

Bank vs. The District Collector, Jalna & Ors. (Writ Petition No.10069/2022 decided on 28th February 2023) and the order passed by the Division Bench of this Court where one of us (Rajesh S. Patil, J.) was a party in the case of *Kotak Mahindra Bank Ltd. & Anr. vs. State of Maharashtra & Ors. (Writ Petition No.6805 of 2023)*, which followed the proposition of law as laid down in *Nashik Merchant Co-operative Bank* (supra).

7. He submitted that there is no need for a fresh order to be passed by the Collector under the provisions of the SARFAESI Act since the above two referred orders passed by the Division Bench of this Court have categorically held that there is no need of re-exercise the powers of executing the order passed under Section 14. The Tahsildar should execute the order passed by the Collector and re-institute the possession of secured assets to secured creditors.

8. Mr. Walimbe, Additional Government Pleader, appearing for the State submitted that the District Magistrate does not have a power to re-execute his own order as he has become *functus officio*. He submitted that there is no provision under the Act that provides for restoration of possession of secured assets to the secured creditors who has lost the possession.

9. We have heard the learned counsel for the parties at length and with the help of both the counsel we have gone through the papers and proceedings of the above Writ Petition.

10. The only question in the present Writ Petition would be whether this Court can grant directions to the District Magistrate and/or the Tahsildar, to reexecute the order passed under Section 14 and to hand over the possession of secured assets to the secured creditor.

11. According to us, this question is no more *res integra* and is covered by the decision of the Division Bench of this Court in the case of *Nashik Merchant Co-operative Bank* (supra). Paragraph 20 of the said order reads as under:-

> 20. The uncontroverted factual aspects <u>in present matter depict that the respondent Nos.5 and 6 have devised novel, unimaginable and unsustainable modus operandi to defeat ends of justice and fair play. It is not only the matter of physical altercation, but would tantamount to assault on the law and statute. They have the audacity to overrule the law. The growing tendency of overpowering the law cannot be tolerated. In peculiar facts and circumstances of this case, we are inclined to exercise powers under Article 226 of the Constitution of India to protect the rule of law and deprecate rising tendency of using criminal force against recovery proceeding undertaken by the financial institutions in terms of SARFAESI Act. We do not find any prohibition under the scheme of the SARFAESI Act that comes in the way of District Magistrate or his delegate to re-exercise the powers to execute the orders passed under section 14.</u>
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> (Emphasis supplied)

12. Further, the Division Bench of this Court in

Kotak Mahindra Bank Ltd. (supra) has followed the decision of *Nashik Merchant Co- operative Bank* (supra). The paragraph 13 of the said order reads as under:-

> 13. Considering the law laid down by the Division Bench of this Court and referred to by us above, we are unable to agree with the submission made by the learned AGP that the District Magistrate does not have the power to re-execute his own order or that he has become functus officio. If we were to take the view as propounded by the learned AGP it would lead to a complete chaos. We have no hesitation in stating that the borrowers have devised a novel, unimaginable and unsustainable modus operandi to defeat the ends of justice. It is not only the matter of physical altercation by assaulting the security guard appointed by the Petitioner Bank and breaking open the lock and seal affixed on the secured asset which is wholly illegal, but the same would also tantamount to an assault on the law and the statute itself. If, after orders are passed under section 14 for dispossession of the borrower, and the same are inter-meddled with by any person including the borrower, the same would result in a mockery of the rule of law. In such a situation the court cannot and should not remain a mute spectator and allow the illegality to continue. The tendency of trying to overreach the law as well as the orders passed by Judicial Authorities has to be nipped in the bud right away, lest the rule of law shall suffer."
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> (Emphasis supplied)

13. Therefore, considering the facts of the present proceedings and in view of the law as held in the case of *Nashik Merchant Co-operative Bank* (supra) and *Kotak Mahindra Bank Ltd.* (supra), we are of the considered view that this is a fit case to exercise our jurisdiction under Article 226 of the Constitution of India and allow the Writ Petition.

14. In the circumstances, we pass the following order.

ORDER

(i) The Writ Petition is allowed in terms of prayer Clause (a), which reads as under:-

> a) This Hon'ble High Court be pleased to issue an appropriate writ of mandamus or any other appropriate writ, or order or direction in the like nature, the Respondent No.1 to 3 be directed to execute the order passed by the Respondent No.1 dated 21.06.2022 by handed over repossession of the secured asset to the Petitioner."

(ii) Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof.

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

Signed by: Diksha Rane
Designation: PS To Honourable Judge
Date: 10/10/2024 10:52:42