

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.333 OF 2024

Tourism Finance Corporation  
of India Ltd.

.. Petitioner

**Versus**

The State of Maharashtra & Ors.

.. Respondents

**Mr.Sidharth Samantaray i/b Tejveer Singh, *for the Petitioner.***

**Mr.A.I. Patel, Addl. G.P. a/w Ms.M.S. Bane, AGP for Respondent Nos.1  
to 4.**

**CORAM : B. P. COLABAWALLA &  
SOMASEKHAR SUNDARESAN, JJ.**

**DATE : JANUARY 23, 2024**

**P. C.**

1. Rule. The learned AGP appearing for all the Respondents waives service. With the consent of parties rule made returnable forthwith and heard finally.

2. The above Writ Petition is *inter-alia* filed seeking an order and direction specifically to Respondent Nos. 2, 3 and 4 to take immediate and effective steps for enforcement and implementation of order dated 5<sup>th</sup> June, 2023 passed under Section 14 of the SARFAESI Act, 2002 and restore physical

possession of the secure asset [Hotel Aishwarya Regency] to the Petitioner-NBFC.

3. The facts in the present case, and which are germane to decide the present Petition, are in a very narrow compass. Initially, the Petitioner-NBFC had granted certain facilities to one Aishwarya Regency LLP. For the aforesaid facilities, one Mr. Sanjay Mali and his wife Mrs. Rupali Mali stood as guarantors. Both of them are also partners of Aishwarya Regency LLP. For the sake of convenience Aishwarya Regency LLP, Sanjay Mali and Rupali Mali are hereinafter referred to as **“the borrowers”**.

4. Since the borrowers defaulted in repaying the facilities to the Petitioner-NBFC, it invoked the provisions of the SARFAESI Act, 2002 by issuing a notice dated 3<sup>rd</sup> June, 2023 under Section 13(2) of the SARFAESI Act, 2002. Since there was no reply to the aforesaid notice, the Petitioner-NBFC took symbolic possession of the secured asset, namely, the piece and parcel of Hotel Aishwarya Regency, situated in lands comprised and/or forming part of survey no.1A/1/1 (H 0.21.70 R or 2170 sq.mtrs.), survey no.1A/1/6 (H 0.21.00 R or 2100 sq.mtrs.) and survey no.1A/1/7 (H 0.22.00 R or 2200 sq.mtrs.) altogether amounting to H 0.64.70 or 6470 sq.mtrs. situated within the Village Panchayat limits of Malwadi (Talegaon Dabhade), Taluka Maval, within the

jurisdiction of Sub-Registrar of Assurances, Maval, Registration District, Pune in the State of Maharashtra [known as Hotel Aishwarya Regency together with Aishwarya Restaurant and office situated within the compound of the hotel], by exercising powers under Rule 8 of the Security Interest [Enforcement] Rules, 2002 read with Section 13(4) of the SARFAESI Act, 2002. This action was taken on 15<sup>th</sup> March, 2023.

5. Since the Petitioner-NBFC was unable to obtain physical possession of the secured asset, they approached the District Magistrate, Pune under Section 14 of the SARFAESI Act, 2002. The District Magistrate, Pune by his order dated 5<sup>th</sup> June, 2023, allowed the Section 14 Application filed by the Petitioner-NBFC. Despite this order, on two occasions, namely, 18<sup>th</sup> July, 2023 and 16<sup>th</sup> September, 2023 physical possession of the secured asset could not be taken because of the absence of adequate police personnel and a gathering of an unruly mob at the site of the secure asset. Accordingly, the Petitioner-NBFC approached this Court by filing Writ Petition (L) No. 12478 of 2023. This Writ Petition was disposed of by order dated 20<sup>th</sup> October, 2023 when the Naib Tehsildar was directed to take physical possession of the secured asset on 7<sup>th</sup> November, 2023. The Talegaon MIDC Police Station was also directed to give all necessary assistance to the Tehsildar to ensure that physical possession of the secured asset is taken. Accordingly, physical possession of the secured

asset was taken on 7<sup>th</sup> November, 2023 and handed over to the Petitioner-NBFC. After this, the secure asset was put up for sale [by advertising a public notice] and which sale was to be conducted on 15<sup>th</sup> December, 2023. However, before the sale could be conducted, on 15<sup>th</sup> December, 2023 at 3.00 AM, the Petitioner-NBFC was forcibly and illegally dispossessed by the borrowers. It is in this light that the present Writ Petition is filed seeking the reliefs more particularly set out by us earlier.

6. We have heard the learned Counsel appearing on behalf of the Petitioner-NBFC and the learned AGP for Respondent Nos. 1 to 4. We are finding that in an increasing number of cases the borrowers are illegally dispossessing the Banks and the Financial Institutions after they have obtained orders under Section 14 of the SARFAESI Act, 2002 and physical possession is handed over to them. This is why the concerned Banks and Financial Institutions are constrained to approach this Court by filing writ petitions. This is also necessitated because the police machinery does not act when called upon by the said Banks and/or Financial Institutions. Be that as it may, we find that no party can take the law into his own hands and physically dispossess another without the due process of law. This Court, in several decisions, has, in facts like the present one, directed the Tehsildar to retake physical possession of the secured asset [with the help of police] and hand over

the same to the secured creditor. For the sake of reference, one such decision is in the case of ***Kotak Mahindra Bank Ltd. & Anr. Vs. State of Maharashtra & Ors.*** [in Writ Petition No. 6805 of 2023 decided on 30<sup>th</sup> June, 2023]. In paragraph 13, this Court has clearly opined that borrowers have devised a novel, unimaginable and unsustainable *modus operandi* to defeat the ends of justice. It is not only a matter of 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], 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 over reach 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.

7. Considering the facts of the present case and which are narrated above, it is clear that the Petitioner-NBFC has been physically dispossessed by the borrowers after the Petitioner-NBFC obtained an order under Section 14 of the SARFAESI Act, 2002 and also took physical possession pursuant to orders passed by the Division Bench of this Court [in Writ Petition (L) No. 12478 of

2023]. Once this is the case, the possession of the borrowers is wholly illegal and cannot be allowed to continue.

8. In these circumstances, it is directed that the Tehsildar [Respondent No.2] shall take physical possession of the secured asset of 31<sup>st</sup> January, 2024 at 11.00 am and vacate whoever is found therein.

9. The Senior Police Inspector, Talegaon MIDC Police Station shall give all necessary police assistance to the Tehsildar [including deputing adequate number of police personnel] to ensure that physical possession of the secured asset is taken from whoever is found therein and thereafter hand over the same to the Petitioner-NBFC, failing which, the concerned Senior Police Inspector of the Talegaon MIDC Police Station shall be liable for contempt.

10. A copy of this order shall also be served by the learned AGP on the Police Commissioner, Pune City [Respondent No.3] so that the said Police Commissioner can ensure that this order is enforced without any hindrance.

11. It is needless to clarify that whatever fees are required to be paid to the Police Authorities for execution and implementation of this order, shall be borne by the Petitioner-NBFC.

12. Rule made absolute in the aforesaid terms and the Writ Petition is disposed of in terms thereof.

13. Though we have disposed of the above Writ Petition, since possession is to be taken on 31<sup>st</sup> January, 2024, we place the above Writ Petition for reporting compliance on 1<sup>st</sup> February, 2024.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[ SOMASEKHAR SUNDARESAN, J.]

[ B. P. COLABAWALLA, J.]