

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 384 OF 2024

Sundaram Home Finance Ltd.

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

**Mr. Sidharth Samantrey a/w Prafull Chipte i/b Sanjay Anabhawane, for
Petitioner.**

**Mr. A. I. Patel, Addl.GP and Mr. R. S. Pawar, AGP for the
State/Respondent Nos. 1 and 2.**

**Mr. Alankar Kirpekar, Rajas Panandikar i/b. Rajas Panandikar, for the
Respondent Nos. 3 and 4.**

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

DATE : JANUARY 15, 2024

P. C.

1. The learned Advocate appearing for Respondent Nos. 3 and 4 states that he has instructions to appear in the above matter and undertakes to file his Vakalatnama within a period of one week from today. The said statement is accepted as an undertaking given to the Court.

2. The above Writ Petition has been filed by the Petitioner challenging the impugned interim order dated 3rd January, 2024 passed by Respondent No.2. The other relief sought is to pass an appropriate direction against Respondent No.2 to provide administrative assistance to the Petitioner to take physical possession of the secured assets as per order the dated 11th August, 2023 passed under Section 14 of the SARFAESI Act, 2002.

3. Initially, Respondent No.2 had passed an order under Section 14 of the SARFAESI Act, 2002, directing that physical possession of Swami Pride Apartment now known as “Rajdhani City Mall” Flat No. 1 to 8, First Floor, now being entire first floor of “Rajdhani City Mall”, Flat No. 9 to 16, Second Floor now being entire second floor of “Rajdhani City Mall”, Flat Nos. 17 to 24, Third Floor, now being entire third floor of “Rajdhani City Mall”, which is situated at CTS No. 2047 B/H. Old Nashik Mahanagar Palika, Raje Bahaddar Lane, B/H-Hundiwala Lane, Bhadrakali, Old Nashik-422001 [for short “**the secured assets**”] shall be taken and handed over to the authorized officer of the Petitioner-NBFC.

4. It appears that thereafter, the borrowers approached Respondent No.2 and filed an application for stay of the said order on the alleged ground that a fraud has been committed whilst obtaining the order under Section 14 of

the SARFAESI Act, 2002. After the above Writ Petition was filed, we are informed that Respondent No.2 has, by his order dated 10th January, 2024, rejected the application of the borrowers and vacated the interim order dated 3rd January, 2024.

5. We have heard the learned Counsel appearing for the respective parties. We fail to understand how the Magistrate, after passing his order under Section 14 of the SARFAESI Act, 2002 was empowered to stay his own order, and that too at the instance of borrowers. The borrower has no right of audience in an application made under Section 14 the SARFAESI Act, 2002. If the borrower is aggrieved by such order, he always has a remedy to challenge the same under Section 17 of the SARFAESI Act, 2002. In such circumstances, Respondent No.2 had no business, to either entertain any application on behalf of the borrower, or grant any stay to his own order. Be that as it may, considering that the Magistrate has now taken corrective action and dismissed the application filed by the borrowers as well as vacated the interim stay, we find that the relief sought for in prayer clause (b) of the above Writ Petition has worked itself out.

6. As far as prayer clause (c) is concerned, the learned AGP appearing for Respondent Nos. 1 and 2, on instructions of Mr. S. M. Nagare,

Law Officer and Smt. Pujari Tehsildar, Nashik [on behalf of Respondent No.2], stated that possession of the secured assets shall be taken on 31st January, 2024 and thereafter handed over to the authorized officer of the Petitioner-NBFC. We accept the said statement as an undertaking given to this Court.

7. It is accordingly directed that the Senior Police Inspector of the local police station, namely, Bhadrakali Police Station, Nashik, shall give all necessary assistance to the Tehsildar [including deputing adequate number of police personnel] on 31st January, 2024 to ensure that the possession of the secured assets are taken and thereafter handed over to the authorized officer of the Petitioner, failing which the said Senior Police Inspector shall be liable for contempt. All costs, charges and expenses payable for the police assistance shall be borne by the Petitioners.

8. It is needless to clarify that this order should not be construed to mean that the borrowers have given up their right to challenge the order passed by the Magistrate under Section 14 by availing of the remedy available to them under Section 17 of the SARFAESI Act, 2002. If any such challenge is made, the same shall be decided on its own merits and in accordance with law.

All directions in this order will be subject to any order passed by the DRT under Section 17 of the SARFAESI Act, 2002, if approached by the borrowers.

9. The above Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

10. 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.]