

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11451 OF 2023

1. TATA Capital Housing Finance Ltd
& Anr.

.. Petitioners

Versus

1. State of Maharashtra through
the Government Pleader
& 4 Ors.

...Respondents

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Mr.Nikhil Mehta i/b KMC Legal Venture, Advocate for Petitioners.

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

Mr.Samay Pawar, Advocate for Respondent No.5.

Mr.Anil Singh-Respondent No.5 is present in Court.

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

DATE : JANUARY 22, 2024.

P C:

1. The above Writ Petition is filed seeking a direction to Respondent Nos.1 and 2 to forthwith render necessary assistance to the Petitioner-NBFC for restoration of possession of their secured asset, namely Flat

No.13, Third Floor, Sheetal Arcade, A Wing, Gajbandhan Patharil, Ram Nagar, Chittaranjandas Path, Dombivili-East, Tal.: Kalyan, Dist.: Thane.

2. The above Petition is necessitated because after the order passed by the District Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (for short "the SARFAESI Act"), the same was implemented and possession of the secured asset was handed over to the Authorised Officer of the Petitioner-NBFC on 7th June 2019. It now transpires that after the Petitioner-NBFC took possession of the secured asset, it has been illegally and forcibly dispossessed by the borrower, namely Respondent No.5, on or about 5th July 2019, and has been occupying the secured asset since then.

3. The learned Counsel appearing on behalf of Respondent No.5 fairly and correctly did not justify the actions of Respondent No.5. He, however, submitted that he would like to settle the dues of the Petitioner-NBFC.

4. We have heard the learned Counsel for the parties. At the outset, we do not wish to enter upon the issue whether Respondent No.5 wants to settle his dues with the Petitioner-NBFC or otherwise. If he wishes to settle the dues, he is free do so by approaching the Petitioner-NBFC. On

taking instructions from Respondent No.5, who is present in Court, the learned Counsel appearing on behalf of Respondent No.5, has stated that if the dues of the Petitioner-NBFC are not settled by 12th February 2024, he undertakes to this Court to hand over physical, vacant and peaceful possession of the secured asset to the Petitioner-NBFC.

5. Considering the statement made by Respondent No.5, we pass the following order :

(a) If the dues of the Petitioner-NBFC are not paid/settled by 12th February 2024, Respondent No.5 shall hand over physical, vacant and peaceful possession of the secured asset, namely Flat No.13, Third Floor, Sheetal Arcade, A Wing, Gajbandhan Patharil, Ram Nagar, Chittaranjandas Path, Dombivili-East, Tal.: Kalyan, Dist.: Thane, to the Petitioner-NBFC on 12th February 2024 at 12:00 p.m.

(b) The Authorised Officer of the Petitioner-NBFC shall be present at site on 12th February 2024 to take physical possession of the secured asset from Respondent No.5.

(c) If for any reason, Respondent No.5 does not abide by the undertaking given to this Court, then, apart from being liable for contempt of this order, the Tahasildar, Kalyan (Respondent No.2) shall take physical possession of the secured asset on 15th February 2024 and vacate whoever is found therein. Thereafter, the Tahasildar shall hand over physical possession of the secured asset to the Authorised Officer of the Petitioner-NBFC.

(d) The Senior Inspector of the local police station (Dombivili Police Station) shall give all assistance to the Tahasildar, Kalyan (including deputing adequate number of police personnel) to ensure that the Tahasildar, Kalyan is able to take physical possession of the secured asset on 15th February 2024 and hand over the same to the Authorised Officer of the Petitioner-NBFC, 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 Petitioner-NBFC.

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

7. Though we have disposed of the above Writ Petition, considering that Respondent No.5 has undertaken to hand over physical possession of the secured asset to the Authorised Officer of the Petitioner-NBFC on 12th February 2024, we place the above matter on Board for reporting compliance on 13th February 2024.

8. 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.]