IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 289 OF 2024

State Bank of India .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr. Sidharth Samantarey a/w Ravindra Bhosale i/b. Vivek Sawant *for the Petitioner.*

Mr. A. I. Patel, Addl. GP a/w. R. S. Pawar*, AGP for the Respondent-State.*

Mr. Daljeet Singh Lall *for the Respondent Nos. 4 to 6.*

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

DATE : JANUARY 17, 2024

P. C.

1. The above Writ Petition is filed seeking direction to Respondent Nos. 1 to 3 to take appropriate steps for taking possession of the subject property being Flat Nos. 102, 601, 901 located on the 1st Floor, 6th Floor and 9th Floor at Building "Dev Kripa Enclave", L. T. Road No.1, MG Road, Goregaon (W), Mumbai-400062. This relief is sought on the basis that though an order under Section 14 of the SARFAESI Act, 2002, was passed and physical possession was thereafter handed over to the Petitioner-Bank, the borrowers, namely, Respondent Nos. 4, 5 and/or 6 have illegally, and by taking the law into their own hands, dispossessed the Petitioner-Bank and re-entered the subject property.

2. The learned Counsel appearing for Respondent Nos. 4 , 5 and/or 6 sought to justify the actions of the said Respondents on the basis that they have made a complaint to the Centralized Public Grievance Redressal and Monitoring System Portal on 22nd September, 2023. According to Respondent Nos. 4, 5 and/or 6 no monies are payable by the said Respondents to the Petitioner-Bank *inter-alia* by relying upon the provisions of the Indian Coinage Act, 1906 and that the banking system being unconstitutional and imbalanced, all the commercial Banks of India have an exploitative and unconstitutional interest as everyone knows that the paper currency in circulation of the country is only being used by Reserve Bank of India and which money does not reach the public. The further allegation in the complaint is that commercial banks and financial companies have printed some monies out of thin air, registered it on the bank passbook, and made it available to the loan holder in the form of loan. Another fanciful allegation made is that the total circulating paper currency in the country is less than the principal amount of loans distributed by the banks/finance companies.

3. We find that the justification given by Respondent Nos. 4, 5 and/or 6 is wholly without any merit. Even assuming for the sake of argument that Respondent Nos. 4, 5 and 6 do not owe any money to the bank because the same has been allegedly paid, does not permit them to take the law into their own hands and dispossess the Petitioner-Bank after an order under Section 14 of the SARFAESI Act, 2002 is passed and possession of the concerned flats has been handed over to the Petitioner. There is something called the rule and law in this country and has to be followed by every citizen. If Respondent Nos. 4, 5 and/or 6 were aggrieved by the actions taken by the Petitioner-Bank, including taking physical possession of the subject flats, remedies were available to them to undo that action. Instead availing of those remedies, Respondent Nos. 4, 5 and 6 have taken the law into their own hands. This certainly cannot be permitted.

4. This issue is no longer up for debate because in several judgments of this Court, where the borrowers have taken the law into their own hands and dispossessed the Banks/Financial Institutions [who have obtained orders under Section 14 of the SARFAESI, 2002], have been ordered to vacate their respective premises and restore possession back to the Bank/Financial Institution. For the sake of convenience, we refer to the decision of this Court in the case of ***RBL Bank Ltd. Vs. State of Maharashtra and Ors*** **[Writ Petition**

No. 7058 of 2023 on 7th August, 2023]. The relevant portion of this decision is at paragraph 12 and 13 thereof the said decision which reads thus:

> *"**12.** We find that this issue is no longer res-integral and is covered by a decision of this Court in the case of **Kotak Mahindra Bank Ltd. (supra).** In fact, the decision of this Court in of **Kotak Mahindra Bank Ltd. (supra)** follows an earlier decision of a Division Bench of this Court (Aurangabad Bench) in the case of **The Nashik Merchant Co-operative Bank v/s. The District Collector, Jalna & Ors. [Writ Petition No. 10069/2022 decided on 28th February 2023].** The argument canvassed by the learned AGP before us was identical to the argument canvassed before the Division Bench in the case of **The Nashik Merchant Co-operative Bank (supra).** The Division Bench after considering the aforesaid submissions, came to the conclusion that they did not find any prohibition under the scheme of the SARFAESI Act, 2002 that came in the way of the District Magistrate or his delegate to re-exercise his powers to execute the order passed by him under section 14 of the SARFAESI Act, 2002. Accordingly, the Division Bench directed the Tehsildar to re-execute the order passed by the District Collector and restitute the possession of the secured asset to the Petitioner within 30 days from the date of the said order. For the sake of convenience, the relevant portions of this decision is reproduced herein below.*
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> > *"7. The respondent No.2 in his reply affidavit states that the order passed under Section 14 of the SARFAESI Act by the respondent No.1/District Collector, was already executed. The actual possession of the secured assets was delivered to the petitioner on 06-08-2022. The respondent Nos. 1 and 2 stood discharged from their obligation under the statutory scheme prescribed under the SARFAESI Act. No provision under the Act provides for restoration of the possession to secured creditor that has been lost by him after execution of orders U/S 14 of SARFAESI Act.*

10. Mr. S.B. Yawalkar, learned AGP would submit that the scheme under the SARFAESI Act provides for action in terms of section 14 regarding handing over possession to the secured creditors. Once the execution of order under section 14(2) is undertaken by the District Collector or his delegate and possession of the secured asset is handed over to the secured creditors, the District Magistrate becomes functus officio and no further indulgence would be expected to him. He would further submit that after receiving the possession as per panchanama dated 06-08-2022, it was the petitioner's responsibility to secure and protect his possession by taking necessary measures. The statutory obligation on the State machinery cannot be enlarged with further duty to protect the possession of secured creditors.

15. The petitioner bank had exercised its right under the SARFAESI Act and took recourse to the procedure prescribed under section 13(2), 13(4) and section 14 of the Act while taking possession of the secured assets under the order dated 21-11-2020 passed by the District Collector, Jalna. The petitioner bank was put into the possession under panchanama dated 06-08-2022. It appears that the petitioner bank had taken sufficient care to protect the secured property by deploying guards. The respondent Nos. 5 and 6 overpowered the guards by taking law in their hands, forcibly broke open the shutter lock of the shop, entered into the secured property and took forcible possession. The bank officers took immediate steps to prevent unlawful act of respondent Nos.5 and 6. They had rightly approached the Police authorities. The FIR was lodged promptly against respondent Nos. 5 and 6 for offences punishable under sections 447, 506 read with 34 of the IPC. They have approached respondent No.2/ Tahsildar for protection/ preservation of their possession of the secured assets.

16. At this stage, a reference can be made to the order passed by Division Bench of this Court in Writ Petition No.8674/2021 in the matter of ***Bank of Baroda Vs. The State***

of Maharashtra and Ors. dated 24-02-2022 *wherein, in similar set of facts, the directions were given against the District Magistrate to entertain the second application of the petitioner filed under section 14 of the SARFAESI Act.*

17. Mr. S.V. Adwant, learned advocate appearing for the petitioner also places reliance on the Judgment delivered by the Division Bench of High Court of Andhra Pradesh in case of ***M/s. Sri.Balaji Centrifugal Castings Vs. M/s ICICI Bank Limited. reported in (2018) SCC Online Hyd 368****, wherein, it is held that there is no bar to secured creditor maintaining more than single application under section 14(1) of the SARFAESI Act for securing the possession of the very same secured assets.*

18. The similar view has been reiterated by the High Court of Kerala in the matter of A.A. Kumaran v. Superintendent of Police, Thissur and Ors. In WP (C) No. 5875 of 2022 dated 18-5-2022 wherein the Court observed thus:

> *21. Further, the present case reveals an instance where a person has taken the law into his hands by force and thereafter seeks the benefit of legal principles. If such actions are permitted to be perpetrated, rule of law will suffer immeasurably. The purport of the Act is to divest the owner of a property in the enforcement of security interest and initiate measures to wipe off the liability by resorting to measures including sale. If measures taken for dispossession and consequent sale are inter-meddled by persons like respondents 4 and 5, it would result in a mockery of the rule of law. The will of the people reflected through the legislation will be seriously infringed, if the court remains a mute spectator.*

20. The uncontroverted factual aspects 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.'*

21. After considering the factual and legal aspects of the matter, we are of the considered view that this is a fit case to exercise of our jurisdiction under Article 226 of the Constitution of India and allow the writ petition in terms of prayer clause (B) of the writ petition and award cost against respondent No 5 & 6. Accordingly, we pass the following order:-

ORDER

(A) The Writ Petition is partly allowed.

(B) The Respondent No.2/The Tahsildar, Jalna is directed to execute the order passed by the respondent No.1/The District Collector, Jalna and restitute the possession of the secured assets to the petitioner within a period of thirty (30) days from the date of this order.

(C) The Respondent Nos. 5 & 6 shall deposit the cost of Rs.25000/- within 30 days of this order in this Court failing which those shall be recovered as land revenue."

13. *Considering the law laid down by the Division Bench of this Court and referred to by us above in* ***Kotak Mahindra Bank Ltd.***

> ***(supra)**, we are unable to agree with the submission made by the learned AGP that the District Magistrate does not have the power to re-exercise 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 of the SARFAESI Act, 2002, 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.*

5. Considering the law laid down by this Court and the totality of the facts and circumstances of the present case, the following order is passed:-

a) Respondent No.2 [The Court Commissioner], with the assistance of the Senior Police Inspector, Goregaon Police Station, shall take physical possession of Flat Nos. 102, 601, 901 located on the 1st Floor, 6th Floor and 9th Floor of the Building called “Dev Kripa Enclave”, L. T. Road No.1, MG Road, Goregaon (W), Mumbai-400062, on 24th January, 2024 at 11.00 am.

b) For the purpose of taking physical possession, the concerned Senior Police Inspector, Goregaon Police Station, shall give all necessary assistance to the Court Commissioner [including deputing adequate number of police personnel] to ensure that Respondent No.2 [the Court Commissioner] is able to take physical possession of the flats mentioned above, and thereafter, handed over the same to the authorized officer of the Petitioner-Bank, failing which, the concerned Senior Police Inspector shall be liable for contempt.

c) The authorized officer of the Petitioner-Bank is also directed to remain present at site on 24th January, 2024 at 11.00 am, so that physical possession of the said flats can be handed over by Respondent No. 2 [the Court Commissioner] to the Authorized Officer of the Petitioner-Bank

6. The above Writ Petition is disposed of in the aforesaid terms. It is purely out mercy that we do not impose any cost on Respondent Nos. 4, 5 and/or 6. Hence, there shall be no order as to costs.

7. Though we have disposed of the above Writ Petition, we place the same on board on 25th January, 2024 for reporting compliance.

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.]**