

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1081 OF 2024

HDB Financial Services Limited

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr. Charles Dsouza a/w. Mr. Padmakar Garad for the Petitioner.

Mr. N. C. Walimbe, Additional G.P. a/w. Mrs. M. S. Srivastava,
A.G.P. for the State.

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

DATE : 12th AUGUST, 2024

P.C. :-

Rule. Rule made returnable forthwith and heard learned
counsel for the parties.

2. By this writ petition, the petitioner, a creditor prays that the
order passed under Section 14 of the Securitization and
Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 dated 8th September 2022 be re-executed. This

is in view of the fact that after the aforesaid order was executed and possession was delivered on 21st July 2023 the respondent nos. 5 to 9 thereafter trespassed into the property. Hence, the petitioner on 31st July 2023 lodged a First Information Report bearing No. 336 of 2023. In this backdrop, the petitioner on 7th August, 2023 filed an application before the District Magistrate seeking delivery of the possession again. Since no steps were taken in this regard, the petitioner has approached this Court.

3. We have heard the learned counsel for the petitioner who submits that by the judgment dated 30th June, 2023 passed in *Writ Petition No. 6805 of 2023 (Kotak Mahindra Bank Ltd. & Anr. vs. State of Maharashtra & Ors.)* to which one of us (Rajesh S. Patil, J.) was a party, a similar issue has been considered and decided. Directions have been issued to re-deliver possession and it has been made clear that it would not be necessary for the creditor to initiate fresh proceedings under Section 14 of the said Act.

4. The learned Additional Government Pleader has relied upon affidavit in reply wherein it is stated that pursuant to the First Information Report, criminal proceedings in the form of RCC No. 71508 of 2024 is pending in the Court of learned Judicial Magistrate, First Class, Court No.3.

5. We find that this Court in *Kotak Mahindra Bank Ltd. & Anr.* (supra) has considered a similar issue and has held that it would not be open for a party to dis-regard the action taken under Section 14 of the said Act and re-enter into possession. In paragraph (13) of the said order, it has been observed 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.

6. In view of the aforesaid, we are satisfied that the petitioner is entitled to a similar relief as was granted in the aforesaid writ petition. Accordingly, the writ petition is allowed in terms of prayer clause (b) which reads as under :-

(b) Your Lordships may be pleased to Issue a writ in the name of Mandamus or suitable direction to Respondent No.2 to 4 to restore the possession of the secured asset/s mortgaged propertie/s i.e. all the piece and parcel of the Property bearing Sr. No. 135, Hissa No. 2/B/1/5, along with structure standing thereon admeasuring area 2550 sq.ft., situated at Warje Malwadi, (Yashodeep Society) near Yashodeep Chowk Tq. Haveli Dist. Pune – 411058 from Respondents No. 5 and 9 in compliance of orders dated 08/09/2022 passed by the Respondent No. 2 in Securitisation Application No. SECU/SR/3205/2022, seeking assistance under section 14 of the SARFAESI Act, 2002 within the timeframe as provided in the order.

7. It is clarified that this direction shall be executed if there is no legal impediment in the form of any prohibitive order issued in any proceedings filed by the respondent nos. 5 to 9.

8. It is made clear that the proceedings in RCC No. 71508 of 2024 shall be conducted in accordance with law without being influenced by the observations made in this order.

9. Rule is made absolute in the aforesaid terms. No costs.

10. List this matter on 9th September, 2024 under the caption “For Compliance”.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]