IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3070 OF 2024

STATE BANK OF INDIA ..PETITIONER
VS.
STATE OF MAHARASHTRA &ORS. ..RESPONDENTS

Adv. Sanjay Anabhawane a/w. Adv. Tejaswi Nanche i/b. Adv. Sanjay Anabhawane for petitioner.
Mr. N. C. Walimbe, Addl. GP a/w. Mr. M. M. Pabale, AGP for respondent nos. 1 to 4 – State.
Mr. Anant Vadgaonkar for the respondent no.5.

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

DATE : 3rd OCTOBER 2024.

P.C. :

1. Rule. Rule made returnable forthwith and by consent of the parties heard finally.

2. By the present Writ Petition the petitioner – a Body Corporate constituted under The State Bank of India Act, 1955 is seeking directions to respondent nos. 2 and 3, to restore and hand over physical possession of the “secured assets” viz. residential flat plus terrace bearing Flat Nos.1801, 1802 and 1803, in ‘A’ Wing on 18th floor, in the building known as “Palm Paradise” situated at Plot No.8 and 8A in Sector No.17, Sanpada, Navi Mumbai.

3. The facts of this case reveal that the petitioner – the

Nationalised Bank had granted various credit facilities in the form of financial assistance from time to time and lastly the same was enhanced to the tune of Rs.42 crores and accordingly, executed various loan security documents from time to time. By executing the various loan security documents, the principal borrower created security interest over secured assets by way of hypothecation with an intention to secure due repayment of the said credit facilities. The said secured assets consists of total six properties. Since there was default in repayment of credit facilities, the accounts of the borrowers were classified as “Non Performing Assets” (NPA). Thereafter, the petitioner issued a notice dated 29th August 2013 under Section 13(2) calling upon the borrowers to pay a sum of Rs.38,91,71,044.97 along with interest thereon within 60 days from the date of said notice. As there was no compliance, an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short ‘SARFAESI’) was filed by the petitioner. The said application under Section 14 was allowed by the order dated 25th November 2016 and the Tahsildar, Thane, was directed to take physical possession of all the secured assets with help of the police and hand over the same to authorized officers of the petitioner. Pursuant thereto on 8th December 2023, the

Tahsildar, Thane, took physical possession of the secured assets being Flat No.1801, 1802 and 1803 situated in 'A' Wing on 18th floor, in the building known as "Palm Paradise" situated at Plot No.8 and 8A in Sector No.17, Sanpada, Navi Mumbai and handed over the same to the authorized officer of the petitioner. As per the petitioner's case, at the time of taking possession of the secured assets being Flat Nos.1801 to 1803, the third party occupant i.e. respondent no.5 was in possession of the secured assets and claimed that he was in possession of the said secured assets under registered Leave and License Agreement on heavy deposit for 55 months which was executed by one of the mortgagor Mr. Sukumaran V. K. in favour of respondent no.5 as licensee. The respondent no.5 claimed that he has filed Regular Civil Suit bearing No.30 of 2019 before Civil Judge (JD) Belapur, Navi Mumbai and had obtained order dated 6th September 2022. The petitioner further claimed that from perusal of the said order, it is crystal clear that the said proceedings are collusive in nature as the plaintiff had not deliberately joined the petitioner/Bank as party defendant in the said proceedings and also the license was allegedly created without consent and/or permission of the petitioner. As there was no restraining order against the petitioner/bank, the respondent no.3 took physical possession of the said secured assets, with the help of the respondent no.4. Thereafter, the petitioner took physical possession of the secured assets from respondent no.3 and fixed seal over the secured assets.

4. Further, as per the petitioner's case, in defiance the respondent no.5 removed the seal fixed on the secured assets and unlawfully entered the secured assets, on very next date i.e. on 9th December 2023. Hence, the petitioner lodged a police complaint with the respondent no.4. The First Information Report (FIR) No.0002/2024 dated 5th January 2024 to that effect has been registered against the respondent no.5. The petitioner, thereafter, followed up with the office of respondents, seeking necessary assistance for repossession of the secured assets.

5. However, according to the petitioner, no further action has been taken by the police despite FIR being lodged. The petitioner understand that the respondent no.5/third party, is politically well connected in the locality and because of his connection, the respondent no.4/local police station is not ready to take any action against the respondent no.5/third party. The petitioner's officer also understand that respondent no.5/ third party, is habitual flat grabber who has been using same technique to grab properties in the locality.

They further understand that similar kind of tactics have been used by the respondent no.5/third party in case of IDBI Bank Limited. The said IDBI Bank has obtained an order of repossession from C.J.M., Thane. The petitioner followed with the office of respondent nos.3 and 4, as there were no steps taken by them, hence the petitioner has filed the present Writ Petition seeking a necessary direction for taking back physical possession of the secured assets by respondent no.2 and handing over the same back to the petitioner.

6. Mr. Sanjay Anabhawane, learned counsel for the petitioner submitted that respondent nos.2 and 3 should forthwith remove the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. So also, the respondent no. 4 should initiate prosecution against the trespassers/ borrowers. Mr. Anabhawane relied upon the decision of Division Bench of this Court (Aurangabad Bench) in the case of *the Nashik Merchant Co-operative Bank vs. The District Collector, Jalna & Ors. (Writ Petition No.10069/2022 decided on 28th February 2023)* and the order passed by the Division Bench of this Court where one of us (Rajesh S. Patil, J.) was a party in the case of *Kotak Mahindra Bank Ltd. & Anr. vs. State of Maharashtra & Ors. (Writ Petition No.6805 of 2023)*, which followed the proposition of law as laid down in *Nashik Merchant Co-*

operative Bank (supra).

7. He submitted that there is no need for a fresh order to be passed by the Collector under the provisions of the SARFAESI Act since the above two referred orders passed by the Division Bench of this Court have categorically held that there is no need of re-exercise the powers of executing the order passed under Section 14. The Tahsildar should execute the order passed by the Collector and re-institute the possession of secured assets to secured creditors.

8. Mr. Walimbe, Additional Government Pleader, appearing for the State submitted that the District Magistrate does not have a power to re-execute his own order as he has become *functus officio*. He submitted that there is no provision under the Act that provides for restoration of possession of secured assets to the secured creditors who has lost the possession.

9. Mr. Anant Vadgaonkar, learned counsel appeared for the respondent no.5/third party. He submitted that the respondent no.5 / third party had taken possession of the flat Nos.1801, 1802 and 1803 from borrowers (licensors), way back on 1st February 2010 whereby a sum of Rs.7 lakhs were deposited as interest free security deposit. Thereafter, again on 15th November 2014, a sum of Rs.9 lakhs were deposited as interest free security deposit and on 7th January 2019, a further sum of Rs.11,50,000/- were deposited with the borrowers (licensors) as interest free security deposit. Mr. Vadgaonkar further submitted that his client has even filed Civil Suit for injunction and declaration and also for recovery of money under Section 34 and 39 of the Specific Relief Act against the borrowers (licensors). He submitted that the Civil Judge has passed a judgment and decree dated 6th September 2002 thereby restraining the present respondent no.5 / third party from being dispossession, from Flat Nos.1801, 1802 and 1803, without following due process of law. He submitted that since a Civil Court has passed a decree protecting the possession, the respondent no.5/third party herein, this Court should protect the possession of the respondent no.5 /third party. He further submitted that the respondent no.5/third party has also filed another Special Civil Suit against the borrowers (licensors) and also against the petitioner – Bank, seeking declaration, injunction and recovery of money before the Civil Judge Single Division, Vashi at Belapur. The said suit is pending for hearing. He submitted that therefore, no adverse orders should be passed by this Court.

10. We have heard the learned counsel for the parties at length and with their help we have gone through the papers and proceedings of the above Writ Petition.

11. The respondent no.5 claims to be a “licensee” of the secured assets. He claims that in the year 2010, a Leave and License Agreement was executed by the borrowers (licensors) with regard to the secured assets in his favour, for a period of 55 months. After said license period was over, periodically the Leave and License Agreement was extended and the last such Leave and License Agreement was executed on 7th January 2019. The term of the said Leave and License Agreement was to end on 30th September 2021. Hence, after 30th September 2021, the respondent no.5 had no right to be in possession of the secured assets. The claim, if any, of the respondent no.5 against the borrowers (licensors) can be independently sought by him from the appropriate Court.

12. It is also pertinent to note that there are copies of three Leave and License Agreements annexed to the Writ Peittion viz. 1st February 2010, 15th November 2014 and 7th January 2019. In all the three Leave and License Agreements, there is no mention of any kind of monthly license fee/compensation payable by the respondent no.5 / third party (licensee) to the borrowers (licensors). All the three agreements mention about the interest free security deposit being paid. However, after going through the receipt annexed to the Leave and License Agreements, it appears that the entire security deposit is purported to be paid by cash except one entry of Rs.1,50,000/- being shown to be paid by NEFT.

13. In the panchanama dated 8^{th} August 2023, the respondent no.5 has voluntarily handed over the possession of the secured assets which has been recorded in the panchanama. Hence, the respondent no.5 had no right in law to re-enter the secured assets.

14. The judgment and decree passed by the Civil Court in favour of the respondent no.5 as regards to protection of his possession, is in a suit where petitioner/bank is not a party. The said judgment and decree is an ex-parte judgment and decree wherein the defendants were borrowers and they have not appeared. The said judgment and decree would not be binding on the petitioner/bank who is the secured creditor.

15. In the circumstances, the only question in the present Writ Petition would be whether this Court can grant directions to the District Magistrate and/or the Tahsildar, to re-execute the order passed under Section 14 and to hand over the possession of secured assets to the secured creditor.

16. According to us, this question is no more *res integra* and is covered by the decision of the Division Bench of this Court in the case of *Nashik Merchant Co-operative Bank* (supra). Paragraph 20 of the said order reads as under:-

> 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.

(Emphasis supplied)

17. Further, the Division Bench of this Court in *Kotak Mahindra Bank Ltd.* (supra) has followed the decision of *Nashik Merchant Co-operative Bank* (supra). The paragraph 13 of the said order reads 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."

(Emphasis supplied)

18. Therefore, considering the facts of the present proceedings and in view of the law as held in the case of *Nashik Merchant Co-operative Bank* (supra) and *Kotak Mahindra Bank Ltd.* (supra), we are of the considered view that this is a fit case to exercise our jurisdiction under Article 226 of the Constitution of India and allow the Writ Petition.

19. In the circumstances, we pass the following order.

ORDER

(i) The Writ Petition is allowed in terms of prayer Clause (b) which reads as under:-

> (b) That this Hon'ble Court be pleased to issue appropriate directions in the nature of writ of Mandamus against the Respondent Nos. 2 to 3, inter-alia, directing them to take appropriate steps for restitution of the secured asset viz., **Residential flat plus Terrace bearing Flat Nos. 1802 and 1803, in A Wing on 18th Floor, in the building known as "PALM PARADISE", situated at Plot No. 8 and 8A in Sector No. 17, Sanpada, Navi Mumbai and Residential flat plus Terrace bearing Flat No. 1801, in A Wing on 18th Floor, in the building known as "PALM PARADISE", situated at Plot No. 8 and 8A in Sector No. 17, Sanpada, Navi Mumbai** by executing the Order dated 25.11.2016;"

(ii) Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**