

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3153 OF 2024

AU Small Finance Bank Limited

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr. Sanjay Anabhawane for the Petitioner.

Mr. A. I. Patel, Additional G.P. a/w. Ms. Tanaya Goswami, A.G.P.
for the State – Respondent Nos. 1 to 5.

Mr. Vinay J. Bhanushali for the Respondent No.7.

**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 15th July 2019 be re-executed. This is in view of the fact that after the aforesaid order was executed and possession was delivered on 13th November 2019, the respondent nos. 6 and 7 thereafter trespassed into the property. Hence, the petitioner on 21st October 2023 lodged a complaint with the police authorities.

3. The learned counsel for the petitioner relied upon the decision in *Writ Petition No. 7884 of 2019 (GIC Housing Finance Limited through Authorized Signatory vs. The State of Maharashtra & Ors.)* and submitted that possession can be re-delivered to the petitioner.

4. The learned counsel for the respondent no.7 submits that since the said respondent has re-entered possession after the same was taken over on 13th November 2019, it would be necessary for the petitioner to initiate fresh proceedings before the civil Court for recovery of the possession. According to him, the order passed under Section 14 of the said Act did not indicate

that it was passed after due application of mind.

5. Insofar as the objection raised by the learned counsel for the respondent no.7 is concerned, it is to be noted that though the order under Section 14 of the said Act was passed on 15th July 2019, the same has not been challenged till today. In absence of any legal right to re-enter the secured asset after possession of the same was delivered to the creditor, it would not be open for the respondent no.7 to raise such objection. Needless to state that in case the respondent no.7 is aggrieved by the order dated 15th July, 2019 passed under Section 14, it would be necessary for him to challenge the same in accordance with law. In absence thereof, the prayers made in the writ petition deserve to be granted. A similar objection has been considered in *GIC Housing Finance Limited* (supra) and has been turned down. We are therefore inclined to follow the said view.

6. Accordingly 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 AND INDUSTRIAL STRUCTURE ON SR. NO. 30, HISSA NO. 14, DHAYARI, TALUKA HAVELI, PUNE by executing the Order dated 15.07.2019.

7. Rule is made absolute in the aforesaid terms. No costs.
8. List the writ petition on 9th September 2024 under the caption of "For Compliance".

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]