IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5442 OF 2024

Bank of Maharashtra ….. Petitioner

VERSUS

State of Maharashtra & Ors. ….. Respondents

Mr. Sanjay Anabhawane a/w. Ms. Medha Rane, Ms. Tejasvi Nande for the Petitioner.

Mr. N. C. Walimbe, Addl. G.P. a/w. Mr. Swapnil P. Kamble, A.G.P. for the State.

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

DATE : 27th SEPTEMBER, 2024

P.C. :-

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

2. By the present Writ Petition, the petitioner – a financial institution is seeking directions respondent nos. 2 and 3, to restore and hand over physical possession of the "secured assets" as described in Survey No. 18/1, City Survey No. 2732 (Part),

Village Khopoli, Taluka Khalapur, District Raigad.

3. The facts of this case reveal that the petitioner – a financial institution had granted credit facilities to one M/s. Bhumi Sudershan Infrastructure of Rs.9,62,50,000/-. 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 under Section 13(2) calling upon the borrowers to pay a sum of Rs.10,95,29,496/- due and payable as on 26th August 2020, along with interest thereon. Soon thereafter, as there was no response from the borrowers, 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 filed under Section 14 was allowed by order dated 2nd February 2022 and the Tahsildar, Khalapur, Raigad was directed to take physical possession of the secured assets with help of the police and hand over the same to

authorized officers of the petitioner.

4. The petitioner by their letter dated 15th March 2022 requested the respondent no.3/Tahsildar, to expeditiously execute the order dated 2nd February 2022. The Officers of the petitioner kept on following with the Office of the respondent no.3, pleading them to fix date for taking possession of the "secured assets". Since there was no progress, the petitioner filed Writ Petition (Stamp) No. 7612 of 2022 before this Court. After the respondents were served with the copy of the writ petition, the respondent no.3 fixed 7th April 2022, as the date for executing the order dated 2nd February 2022.

5. The borrowers thereafter filed S.A. No. 145 of 2022, under Section 17 of the SARFAESI Act before Debts Recovery Tribunal, Pune. Alongwith the said Securitisation Application, Interim Application No. 475 of 2022 was also filed by the borrowers, seeking an order of restrain to the bank from executing the order passed under Section 14 of the SARFAESI Act. By his order

dated 6th April 2022, the Presiding Officer of Debts Recovery Tribunal, Pune directed the borrowers to deposit 50% of the total dues within four months and further clarified that in case the said amount is not deposited, the interim order shall get automatically vacated.

6. The borrowers choose not to comply with the directions passed in the order dated 6th April 2022, by Debts Recovery Tribunal, Pune, hence the interim protection granted stood automatically vacated.

7. The Officers of the petitioner thereafter followed with the office of the respondent no.3/Tahsildar and requested them to execute the order dated 2nd February 2022. In the meanwhile the Division Bench of this Court vide order dated 17th April 2023, passed general directions to all the District Magistrates and Chief Metropolitan Magistrates to expeditiously execute the order passed under Section 14 of the SARFAESI Act. However, as there was no progress in the present proceedings, the petitioner filed

Writ Petition No. 13027 of 2023 before this Court. On 25th October 2023 while the matter was moved for urgent relief, the matter was adjourned to 1st November 2023 – for directions. The respondent no.3/Tahsildar thereafter fixed the date on 31st October 2023, for taking possession of the secured assets. As per the petitioner on 31st October 2023, the respondent no.3 handed over only possession of secured assets on paper, without actually taking physical possession of the secured assets. When the said fact was brought to the notice of the Division Bench of this Court in proceedings of Writ Petition No. 13027 of 2023, this Court kept the matter under the caption of 'compliance' on 9th November 2023.

8. Pursuant thereto on 8th November 2023, the Tahsildar, Khalapur - Raigad, took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner.

9. As per the petitioner's case through their Officer, they realized that on 9th November 2023, the borrowers removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately on 18th November 2023, they lodged a police complaint with the respondent no. 8. The petitioner also filed an application with the office of respondent no.8, seeking necessary assistance for repossession of the secured assets.

10. According to the petitioner, no further action has been taken by the police despite complaint being lodged. The petitioner hence has filed the present Writ Petition seeking a necessary direction for taking back physical possession of the secured assets from respondent nos. 4 to 7 and handing over the same back to the petitioner.

11. Mr. Anabhawane, learned counsel for the petitioner submitted that respondent nos. 3 and 8 should forthwith remove

the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. Mr. Anabhawane, learned counsel for the petitioner submitted that the decision of the 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).

12. He submitted that there is no need for a fresh order to be passed by the Magistrate under the provisions of the SARFAESI Act since the two decisions above referred 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.

13. 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 have lost the possession.

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

15. 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.
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> (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."
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> (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 considerable 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., Survey No. 18/1, City Survey No. 2732 (Part), Village Khopoli, Taluka Khalapur, District Raigad by executing the Order dated 02.02.2022

(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.]**