IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8827 OF 2024

AU SMALL FINANCE BANK LIMITED ..PETITIONER
VS
STATE OF MAHARASHTRA & ORS ..RESPONDENTS

Mr. Sanjay Anabhawane a/w. Ms. Medha Rane, Ms. Tejaswi Hanche for petitioner.

Mr. Swapnil P. Kamble, AGP for respondent nos. 1 to 5 – State.

Mr. S. S. Patwardhan a/w. Mr. P. P. Pujari for respondent nos.6 to 8.

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

DATE : 16th 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 financial institution is seeking directions to respondent nos. 2 and 3, to restore and hand over physical possession of the “secured assets” viz. Property situated at land along with construction of CTS No.303 area admeasuring 545 sq. mtr. i.e. 50.69 sq. mtr. and construction thereon area admeasuring 360 sq. ft. i.e. 33.45 sq.mtrs. (built up) situated at Village Akurdi, Taluka – Haveli, Pune, Maharashtra by executing the order dated 6th January 2023.

3. The facts of this case reveal that the petitioner – a financial institution had sanctioned/granted credit facility/financial assistance/term loan (Business/Construction loan) in favour of the respondent nos.6 to 10 (principal borrowers) and in consideration thereto the respondent nos.6 to 10 (principal borrowers) have executed various loan and security documents in favour of the petitioner. The respondent nos.6 to 10 have created equitable mortgage of the secured assets and deposited all the original title deeds of the secured assets with the petitioner and being secured creditor and mortgagee, the petitioner is holding original title deeds of the secured assets. The petitioner has also intimated the said creation of equitable mortgage of the secured assets to the concerned Sub-Registrar of Assurance by lodging Notice of Intimation of Memorandum of deposit of title deeds. 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 demand notice dated 10th May 2022 under Section 13(2) calling upon the principal borrowers to repay the outstanding amount of Rs.1,15,08,505/- due and payable within 60 days from the date of the said notice along with interest thereon.

4. Despite receipt of the said demand notice dated 10th May 2022, the respondent nos.6 to 10 have failed to discharge the liability and also failed to raise objection/representation u/s. 13(3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI Act'), hence, the Authorised Officer of the petitioner proceeded further under the provisions of Section 13 (4) of the SARFAESI Act and took symbolic possession of the secured assets by drawing panchanama and also published the factum possession notice in the daily newspapers and also affixed the possession notice on the outer door of the secured assets.

5. Soon thereafter, an application u/s. 14 SARFAESI Act was filed by the petitioner being S.A. No.4967 of 2022. The said application under Section 14 was allowed by an order dated 6th January 2013 and the respondent no.3 – Executive Magistrate/Resident Naib Tehsildar, Upper Pimpri Chinchwad 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. Pursuant thereto on 24th August 2023, the respondent no.3 took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner.

6. As per the petitioner's case, after taking physical possession, they were initiating steps for carrying out activities of valuation, during the said process their officers realized that the respondent nos.6 to 10 removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately lodged a police complaint dated 5th December 2023 with the respondent no.5. The petitioner also filed an application with the office of respondent no.2, seeking necessary assistance for repossession of the secured assets on the ground that the respondent nos.6 to 10 have criminally trespassed in the secured assets. Despite of the said application, the respondent no.2 had failed to take any action of repossession of the secured assets. However, according to the petitioner, no further action has been taken by the respondent no.2 for repossession of the secured assets. The petitioner, hence, 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.

7. Mr. Sanjay Anabhawane, learned counsel for the petitioner submitted that respondent nos.2 to 5 should forthwith remove the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. So also, the respondent nos. 4

and 5 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).

8. 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 two orders 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.

9. Mr. Swapnil Kamble, Assistant 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.

10. Mr.S. S. Patwardhan, appeared on behalf of borrowers/ tres-passers/ Respondent no.6 to 10. He submitted due to Covid Pandemic, the borrowers defaulted in payment of some installments of bank. He submitted that his clients were always ready to pay the outstanding amount, however the bank without paying any heed, went to extreme steps and initiated proceedings u/s. 14 of SARFAESI. No documents were furnished to borrowers. He submitted that false complaint in Police has been lodged against his client. He submitted that Writ Petition should be dismissed.

11. 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.

12. 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.

13. 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)

14. 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)

15. 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.

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

ORDER

(A) The Writ Petition is allowed. The Respondent Nos. 3 to 5 are directed to execute the Order dated 6th January 2023 passed by the Respondent No.2 in Securitisation Application No.4967 of 2022 u/s.14 of the SARFAESI Act by granting necessary assistance in taking possession of the secured assets viz., the property situated at land along with construction of CTS No.303 area admeasuring 545 sq. ft. i.e. 50.69 sq. mtr. and construction thereon area admeasuring 360 sq. ft. i.e. 33.45 sq.mtrs. (built up) situated at Village Akurdi, Taluka – Haveli, Pune, Maharashtra by executing the order dated 6th January 2023;

(B) 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.]**