IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9105 OF 2024

AU Small Finance Bank Limited
(Formerly known as AU Financiers (India) Ltd.) **..... Petitioner**

VERSUS

The 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. :-

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 no.3 for expeditious execution of the order dated 24th March 2023 passed

by the respondent no.2 i.e. the District Magistrate, Pune in Securitisation Application No. 520 of 2023 under Section 14 of the SARFAESI Act and hand over physical possession of the “secured assets” viz. Property situated at Sr. No.497/2C/1, City S. No. 1833, Shop No. 1883, 1833/1, 1833/11, Shop No. 03, Ground Floor, Sarita Apartment, D Wing, Mauje Bhosari, Taluka Haveli, Dist. Pune, Maharashtra admeasuring 137 sq.ft. and property situated at Sr. No. 497/2B/1, City S. No. 1809, Shop No. 14, Ground Floor, Sukwani Paradise, Mauje Bhosari, Taluka Haveli, Dist. Pune, Maharashtra admeasuring 182 sq.ft.

3. The facts of this case reveal that the petitioner – a financial institution had sanctioned/granted credit facility to the tune of Rs.24,25,000/- and Rs. 4,85,000/- in favour of the respondent nos.6 to 8 (principal borrowers) and in consideration thereto the respondent nos.6 to 8 (principal borrowers) have executed various loan security documents in favour of the petitioner.

4. Since there was default in repayment of credit facilities, the accounts of the borrowers were classified as “Non Performing Assets” (NPA) on 8th September 2022. Thereafter, the petitioner issued a demand notice dated 14th September 2022 under Section 13(2) calling upon the principal borrowers to repay the outstanding amount of Rs.25,77,022/- and Rs.4,15,804/- togetherwith interest due and payable within 60 days from the date of the said notice along with interest thereon.

5. Despite receipt of the said demand notice dated 14th September 2022, the respondent nos.6 to 8 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.

6. Soon thereafter, an application under Section 14 of the SARFAESI Act, was filed by the petitioner before the District Magistrate, Pune being S.A. No. 520 of 2023. The said application under Section 14 was allowed by the District Magistrate by its order dated 24th March 2023 and directed the Naib Tahsildar of Uppar Pimpri Chinchwad to take possession of the secured assets with help of the police and hand over the same to authorized officers of the petitioner.

7. Pursuant thereto on 3rd November 2023, the respondent no. 3 took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner alongwith possession receipt.

8. After taking physical possession of the secured assets, the petitioner attempted to appoint security guards. However, the concerned society refused to allow the security guards of the petitioner. As per the petitioner’s case, they were initiating

steps for carrying out activities of valuation, during the said process their officers realised that the borrowers had removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately lodged a police complaint dated 2nd April 2024 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. Time to time the petitioner visited the office of the respondent no.2, however, the respondent no.2 had failed to take any action of 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 nos.2 and 3 from respondent nos. 6 to 8 and handing over the same back to the petitioner.

9. 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 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).

10. 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.

11. 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.

12. Mr. S. S.Patwardhan, learned counsel appeared on behalf of the borrowers/tresspassers/respondent nos. 6 to 8. He submitted that 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 under Section 14 of SARFAESI Act. No documents were furnished to the borrowers. He submitted that a false complaint in police has been lodged against his client. He submitted that the writ petition should be dismissed.

13. 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.

14. 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.

15. 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 <u>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.</u>
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> (Emphasis supplied)

16. 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)

17. 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.

18. 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 24th March 2023 passed by the Respondent No.2 in Securitisation Application No. 520 of 2023 u/sec. 14 of the SARFAESI Act by granting necessary assistance in taking possession of the secured assets viz.,

> (i) The property bearing Shop No. 03, situated at Sr. No. 497/2C/1, City S. No. **1833, 1883, 1833/1, 1833/11**, Ground Floor, Sarita Apartment, D Wing, Mauje Bhosari, Taluka Haveli, Dist. Pune, Maharashtra admeasuring 137 sq.ft.
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> (ii) The property bearing Shop No. 14, situated at Sr. No. 497/2B/1, City S. No. **1809**, Ground Floor, Sukwani Paradise, Mauje Bhosari, Taluka Haveli, Dist. Pune, Maharashtra, admeasuring 182 sq.ft. by using such force including breaking open the lock or any hurdle thereof by taking assistance of police.

(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.]**