



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12285 OF 2024

ICICI HOME FINANCE LTD THR ITS
AUTHORIZED OFFICER

..PETITIONER

VS

THE STATE OF MAHARASHTRA THR
GOVERNMENT PLEADER AND ORS

..RESPONDENTS

Adv. Salman Athania i/b. Adv. Padmakar S. Garad for petitioner.
Smt. Leena Patil, 'B' Panel for respondent State.

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

DATE : 30th September 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 to 5, to restore and hand over physical possession of the secured assets/ mortgaged property i.e. Bunglow No.2, Row House Type – 5, Ground + 1st Floor, Raul Nagar, Kurgaon, Boisar (W), Taluka and District Palghar from respondent nos. 6 and 7.

3. The facts of this case reveal that the petitioner – a financial institution had granted loan facilities to the respondent nos. 6 and 7.

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) Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short ‘SARFAESI Act’) calling upon the borrowers to pay a sum of Rs.70,45,639/- due and payable as on 10th October 2022 along with interest thereon. Despite of this notice, the respondent nos.6 and 7 failed to repay the outstanding amount within stipulated time, therefore, the petitioner initiated measures under the SARFAESI Act against respondent nos. 6 and 7. The petitioner following due process of law, filed Securitisation Application No.1163/2023 before the learned District Magistrate Palghar, seeking assistance under Section 14 of the said Act for the purpose of taking physical possession of the secured assets.

4. The said application filed under Section 14, was allowed vide order dated 2nd November 2023 and the Tahsildar, Palghar 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 12th January 2024, the Tahsildar, Palghar, took physical possession of the secured assets and handed

over the same to the authorized officer of the petitioner.

5. As per the petitioner's case, through their officer they realised that on 16th January 2024, the borrowers removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately on 16th January 2024 lodged a police complaint with the respondent no.5. The petitioner also filed an application dated 5th June 2024 with the office of respondent no.2, seeking necessary assistance for repossession of the secured assets. The respondent no.2 has not passed any order on the said application.

6. According to the petitioner, no further action has been taken by the police despite the 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 by respondent nos.6 and 7 and handing over the same back to the petitioner.

7. Mr. Salman Athania, 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. Mr. Athania 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 District 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.

9. Smt. Leena Patil, the learned 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*. She 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 possession.

10. 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.

11. 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.

12. 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)

13. 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)

14. Therefore, considering the facts of the present proceedings and in view of the law as laid down 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.

15. 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) YOUR LORDSHIPS may be pleased to Issue a writ in the nature of Mandamus or suitable direction to Respondent No.2 to 5 to restore the possession of the secured asset/s/mortgaged propertie/s i.e. Bunglow No.2, Row House type 5, Ground + 1st Floor, Raul Nagar, Kurgaon, Boisar (W), Tal & Dist. Palghar from Respondents No.6 and 7 in compliance of orders dated 02/11/2023 passed by the respondent No.2 in **Securitisat**ion Application No. 1163/2023, seeking assistance under section 14 of the SARFAESI Act, 2002 within the timeframe as provided in the order.”

(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.]