IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12298 OF 2024

MOTILAL OSWAL HOME FINANCE LIMITED
(PREVIOUSLY KNOWN AS ASPIRE HOME
FINANCE CORPORATION LIMITED) ..PETITIONER

VS.

THE STATE OF MAHARASHTRA & ORS. ..RESPONDETNS

Mr. Padmakar S. Garad through VC a/w. Mr. Salman Athanin for petitioner.

Mr. N. C. Walimbe, Addl. GP a/w. Mr. S. P. Kamble, AGP for respondent – State.

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

DATE : 19th 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 4, to restore and hand over physical possession of the "secured assets" i.e. Flat No.4, 1st floor, Untwals Sea View, Plot No.B-8/1, Sec-19, Koparkhairne, Thane – 400 709.

3. The facts of this case reveal that the petitioner – a financial institution had granted housing loan facility to respondent no.5 - Mr.

Ranjankumar Radheshyam Jaiswal and respondent no.6 – Mrs. Rita Ranjankumar Jaiswal. Since there was default in repayment of housing loan facility, the account of the borrowers was classified as "Non Performing Asset" (NPA). Thereafter, the petitioner issued a notice dated 15th June 2017 under Section 13(2) calling upon the borrowers to pay a sum of Rs.11,61,794/- due and payable as on 14th June 2017 along with interest thereon. Soon thereafter, 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 under Section 14 was allowed and the Tahsildar, Thane 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 13th October 2022, the Tahsildar, Thane, took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner on the same day. Thereafter, the respondent nos. 5 and 6 illegally trespassed the secured assets by snatching the lock from the officers of the petitioner when they went to the secured assets for inspection. Hence, the petitioner immediately on 25th January 2023 lodged a police complaint with the Koparkhairne Police Station, Navi Mumbai – 400

709.

4. Thereafter, on or about 2nd February 2023, the respondent no.5 filed Regular Civil Suit No.60/2023 before the Joint Civil Judge J.D., Belapur, Navi Mumbai. The petitioner submits that after perusing the said suit related documents, the petitioner appeared and filed Application under Order VII Rule 11 (d) r/w. Section 151 of the CPC r/w. Sections 17 and 34 of the SARFAESI Act for rejection of plaint (Exhibit 8). The respondent no.5 failed to file their reply to the said application for rejection of plaint of petitioner. The Joint Civil Judge J.D., thereafter, heard the parties and by its order dated 10th April 2024 duly allowed Exhibit 8, and the suit was rejected as per the provisions of Order VII Rule 11(d) of the CPC.

5. The petitioner, thereafter, filed an application on 13th March 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. 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.5 and 6 and handing over the same back to the petitioner.

6. Mr. Padmakar S. Garad, learned counsel for the petitioner submitted that respondent nos.2 to 4 should forthwith remove the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. So also, the respondent no.4 should initiate prosecution against the trespassers/ borrowers. Mr.Garad 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).

7. 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.

8. Mr. N. C. 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 has lost the possession.

9. 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.

10. 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.

11. 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</u>

> 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)

12. 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)

13. 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.

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

ORDER

(A) 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 4 to restore the possession of the secured asset/s/mortgaged properties/s i.e. **All that, FLAT No.04, 1ST FLR, UNTWALS SEA VIEW, PLOT NO.-B-8/1, SEC-19, KOPARKHAIRNE 400 709, THANE, MAHARASHTRA, INDIA**. from Respondents No.5 to 6 in compliance of orders dated 15/02/2019 passed by the respondent No.2 in **Securitisation Application No.975/2018**, seeking assistance under section 14 of the SARFAESI Act, 2002 within the timeframe as provided in the order."

(B) Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof.

15. List for reporting compliance on 18th October 2024.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**