



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12813 OF 2024

BANK OF INDIA

..PETITIONER

VS.

M/S. MAHARANA ELECTRICALS PVT. LTD.

THR.ITS DIRECTORS & ORS.

..RESPONDENTS

Mr. O. A. Das for petitioner.

Mr. N. C. Walimbe, Addl. G.P a/w. Smt. M. S. Srivastava, AGP for
respondent – State.

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

DATE : 9th 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 Nationalised Bank is seeking directions to respondent nos. 1 to 3, to restore and hand over physical possession of the “secured assets” viz. Flat No.B-116, 1st floor, Nisarg Darshan Co-operative Housing Society Ltd., situated at Sector 26, Survey no.155/1/3 to 155/1/6, Ravet, Akurdi, Pune – 411 0440

3. The facts of this case reveal that the petitioner – a Body Corporate, constituted under the provisions of the Banking

Companies (Acquisition and Transfer of Undertakings) Act, V of 1970 (for short 'the Bank') had granted credit facilities to one M/s. Maharana Electricals Pvt. Ltd. Its Directors Mr. Vilas Sadashiv Pardeshi and Mrs. Meera Vilas Pardeshi stood as Guarantors. 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 the outstanding dues. 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 Executive Magistrate and Resident Deputy Tahsildar, Upper Pimpri Chinchwad, was directed to hand over physical possession of the secured assets to the Bank's authorized officer of the petitioner. Pursuant thereto on 9th October 2023, the Tahsildar took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner.

4. As per the petitioner's case, in or about 15th October 2023, the respondent no. 3 with some third party removed the seal fixed on the secured assets and unlawfully entered into the secured assets. Hence,

the petitioner lodged a police complaint with the respondent no.5 on 18th January 2024. The First Information Report (FIR) No.12 of 2024 to that effect has been registered against the respondent no.3. The petitioner also followed up with the office of respondents, seeking necessary assistance for repossession of the secured assets. The petitioner also sent letter dated 2nd July 2024, to respondent no.6, requesting to take steps to hand over back the secured assets.

5. However, according to the petitioner, no further action has been taken by the police despite FIR 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 no. 3 and handing over the same back to the petitioner.

6. Mr. O. A. Das, learned counsel for the petitioner submitted that respondent nos.4 to 6 should forthwith remove the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. So also, the respondent no.5 should initiate prosecution against the trespassers/ borrowers. Mr. Das 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 District Magistrate and District Collector, Pune Home Department under the provisions of the SARFAESI Act since the above two referred orders 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 District Magistrate and District Collector, Pune Home Department and re-institute the possession of secured assets to secured creditors.

8. 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 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 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)

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.”

(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), only to limited extent, which reads as under:-

“(b) That this Hon’ble Court may be pleased to Issue a Writ in the name of Mandamus or suitable direction to Hon’ble District Magistrate Pune, the Respondent No. 6 to retake and/or to restore the possession of the secured asset/s mortgaged property/ies i.e. all the piece and parcel of the Property bearing Flat No.B-116, 1st Floor, admeasuring 112.45 Sq. Meters i.e. 1210 Sq. Ft. in Nisarg Darshan Co-operative Housing Society Ltd., situated at Sector-26 Survey No.155/1/3 to 155/1/6 Revet, Akurdi, Pune – 411 044 from Respondent No.3 in compliance of Order dated 11.11.2022 (as Exhibit “I” hereto) passed by the Ld. District Magistrate, Pune, in Securitization Application seeking assistance Under Section 14 of the SARFAESI Act, 2002 within the time frame as provided in the order.”

(B) This direction shall be carried out within a period of four weeks from today if there is no legal impediment.

(C) 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.]