IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12945 OF 2024

HDFC BANK LTD. ..PETITIONER

VS

THE STATE OF MAHARASHTRA & ORS ..RESPONDENTS

Adv. Shreesh Oak i/b. SC Legal for petitioner.
Mr. Satchit Bhogale, 'B' Panel Counsel for respondent – State.

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

DATE : 3rd December 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 company registered under the Companies Act, 1956 is seeking directions to respondent nos. 2 to 4, to hand over possession of the "secured assets" i.e. Madhuban Building, Wing A, Flat No. 001, Ground Floor, S. No.18/1, CTS No.4896, Village Katrang, Near Mogalwadi, D. P. Road, Khopoli – 4102023, Maharashtra.

3. The facts of this case reveal that the petitioner is a body corporation constituted under the provisions of the Banking

Companies (Acquisition and Transfer of Undertakings) Act, 1970 had granted credit facilities to the respondent no.5 along with her husband, of Rs.19,25,000/-. Since there was default in repayment of credit facilities, the account of the respondent no.5 along with her husband was classified as "Non Performing Assets" (NPA). Thereafter, the petitioner issued a demand notice dated 11th April 2022, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI') calling upon the borrower to pay a sum of Rs.19,39,483/- due and payable as on 28th February 2022 along with interest thereon within 60 days from the receipt of the notice. The said notice was also published in two newspapers as per the rules and provisions of the SARFAESI Act.

4. On failure to comply with the demand notice under Section 13(2) of the SARFAESI Act, an application under Section 14 of the was filed by the petitioner before the respondent no.2. The said application under Section 14 was allowed by the respondent no.2 vide order dated 21st December 2022 and the respondent no.3 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 20th December 2023, the respondent no.3 in presence of police authorities took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner. Thereafter, the petitioner published the said possession notice in two local newspapers.

5. As per the petitioner's case, on 16th January 2024, the officer of the petitioner, Mr. Rajesh Desai visited the secured assets for inspection and found that the respondent no.5 had illegally entered and occupied the secured assets. The officer of the petitioner informed the respondent no.5 that the petitioner had taken physical possession of the secured assets as per the order passed by the respondent no.2, however, the respondent no.5 strongly refused to leave the secured assets. Hence, the petitioner lodged a police complaint, pursuant thereto First Information Report (FIR) No. 0198 dated 1st July 2024 was lodged by the respondent no.4 against the respondent no.5. The petitioner also followed up with the office of respondent nos. 2 to 4, seeking necessary assistance for repossession of the secured assets.

6. 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 by respondent no.5 and handing over the same back to the petitioner.

7. Mr. Shreesh Oak, learned counsel for the petitioner submitted that respondent nos.2 to 4 should forthwith remove the respondent no.5 from the secured assets and hand over the physical possession to the petitioner. So also, the respondent no.4 should initiate prosecution against the respondent no.5. Mr. Oak 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 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 Collector and re-institute the possession of secured assets to secured creditors.

9. Mr. Satchit Bhogale, Assistant Government Pleader, appearing for the respondent - 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. 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.
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> (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."
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> (Emphasis supplied)

14. 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.

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

ORDER

(i) The Writ Petition is allowed. The Respondent Nos.2 to 4 are directed to execute the Order dated 21st December 2022 passed by the Respondent No. 2 under Section 14 of the SARFAESI Act by taking back possession of the secured assets viz. Madhuban Building, Wing A, Flat No. 001, Ground Floor, S. No.18/1, CTS No.4896, Village Katrang, Near Mogalwadi, D. P. Road, Khopoli – 4102023, Maharashtra, and handing it back to the petitioner, if there is no other legal impediment.

(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.]**