IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14132 OF 2024

NIDO HOME FINANCE LTD. ..PETITIONER
VS
MR. VIRUPAKSHA AYAPPA HALUR & ORS ..RESPONDENTS

Mr. Ashutosh R. Gole a/w. Ms. Vishwali Botle for petitioner.
Ms. D. S. Deshmukh, AGP for the respondent – State.

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

DATE : 23rd October 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 the respondent nos. 8 to 10 to take physical possession of the secured assets and hand over physical possession of the "secured assets" viz. (i) Plot No.4, CTS No.24002 admeasuring 783.97 sq. ft.s situated at Sainath Nagar, Lingade Mala, Mouje – Kabnoor, Taluka Hatkanangale, District – Kolhapur; (ii) Plot No.17, Gat No.618/1, CTS No.5982 admeasuring 186.61 sq.mts. Situated at Vikram Nagar, Ichalkaranji, Taluka – Hatkanangale, District – Kolhapur and (iii) R.S. No.693/1A, New CTS No.9914/2, admeasuring 65 sq. mts. Situated at Kasba, Ichalkaranji, Taluka – Hatkanangale, District – Kolhapur and hand over the same to the petitioner.

3. The facts of this case reveal that the petitioner – a financial institution had granted home loan to the respondent nos.1 to 7. The respondent nos.1 to 3 availed a home loan to the tune of Rs.26,19,706/-, respondent no.4 and 5 availed a home loan of Rs.86,86,765/- and respondent nos.6 and 7 availed a home loan of Rs.10,47,060/-. In consideration of the said credit facility, the said respondent nos. 1 to 7 executed various loan and security documents and respondent nos. 1 to 7 created security interest over the secured asset. 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 demand notice under Section 13(2) calling upon the respondent nos.1 to 3 to repay a sum of Rs. 27,90,965/- together with further interest, charges and expenses incurred until the date of payment within 60 days from the date of receipt of the notice. A similar demand notice was issued on the respondent nos. 4 and 5 on 6th May 2021 and on respondent nos.6 and 7 on 17th November 2022 whereby they were called upon to repay an outstanding amount of Rs.94,48,448/- and Rs.

10,55,284/- respectively together with further interest, charges and expenses incurred until the date of payment within 60 days from the date of receipt of the notice. The said notices were personally served upon the respondent nos.1 to 7.

4. Despite issuing the said demand notice, the respondent nos. 1 to 7 neither discharged their liability within stipulated period nor raised any objections or made any representations under Section 13 (3-A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI'). On account of the respondent nos.1 to 3 failure to repay the loan amount, the petitioner moved Criminal Miscellaneious Applications under Section 14 of the SARFAESI for taking physical possession of the secured assets before the learned Chief Judicial Magistrate, Kolhapur. The said applications under Section 14 were allowed by orders dated 14th March 2023 and 29th December 2023 and the learned Chief Judicial Magistrate further appointed the Court Commissioner to take possession of the secured assets with help of the police and hand over the same to authorized officers of the petitioner. Pursuant thereto on 22nd June 2023, the Court Commissioner issued a notice to the respondent nos.1 to 7 informing them that the possession of the secured assets will be taken and will be handed over to the petitioner. Thereafter, on 8th July 2023, the possession of the secured assets mortgaged by the respondent nos.1 to 3 was handed over to the petitioner. The possession of the secured assets of the respondent nos.4 and 5 and respondent nos.6 and 7 was handed over on 11th May 2023 and 21st February 2024 respectively.

5. As per the petitioner's case, on 11th July 2023, at 2.00 p.m., the respondent nos.1 to 3 removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately lodged a police complaint with the respondent no.10 - Shivaji Nagar Police Station, Kolhapur against respondent nos.1 to 3. So also, on 12th May 2023, at 11.00 a.m., the respondent nos. 4 and 5 removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately lodged a police complaint with the respondent no.9 – Ichalkaranji Police Station, Kolhapur against respondent nos.4 and 5. The respondent no.6, on 21st February 2024, at 11.30 p.m., removed the seal fixed on the secured assets and unlawfully entered the secured assets. Hence, the petitioner immediately lodged complaint, and the First Information Report (FIR) was lodged by the respondent no.9 – Ichalkaranji Police Station, Kolhapur.

6. The petitioner lodged complaints and filed applications to the Chief Judicial Magistrate for restoration of possession of secured assets. However, according to the petitioner, no further action has been taken by the police authorities against the respondent nos.1 to 7. 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.1 to 7 and handing over the same back to the petitioner.

7. Mr. Ashutosh Gole, learned counsel for the petitioner submitted that respondent no.8 to 10 should forthwith remove the trespassers/borrowers from the secured assets and hand over the physical possession to the petitioner. So also, the respondent nos.8 to 10 should initiate prosecution against the trespassers/ borrowers. Mr.Gole 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 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.

9. Ms. D. S. Deshmukh, 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.

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

(A) The Writ Petition is allowed. The Respondent Nos.8 to 10 are directed to take physical possession of the secured assets and hand over physical possession of the "secured assets" viz. (i) Plot No.4, CTS No.24002 admeasuring 783.97 sq. ft.s situated at Sainath Nagar, Lingade Mala, Mouje – Kabnoor, Taluka Hatkanangale, District – Kolhapur; (ii) Plot No.17, Gat No.618/1, CTS No.5982 admeasuring 186.61 sq.mts. Situated at Vikram Nagar, Ichalkaranji, Taluka –

Hatkanangale, District – Kolhapur and (iii) R.S. No.693/1A, New CTS No.9914/2, admeasuring 65 sq. mts. Situated at Kasba, Ichalkaranji, Taluka – Hatkanangale, District – Kolhapur and hand over the same to the petitioner, if there is no other legal impediment.

(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.]**