IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14509 OF 2024

BANK OF INDIA ..PETITIONER
VS.
M/S. SANCHEVINI INDUSTRIES & ORS. ..RESPONDENTS

Mr. O. A. Das i/b. O. A. Das & Associates for petitioner.
Mrs. Tanu N. Bhatia, AGP for respondent nos. 4 to 6 – State.

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

DATE : 21st 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 Nationalised Bank is seeking directions to respondent no. 6, to restore and hand over physical possession of the “secured assets” viz. House No.973 and 979 in Plot No.2, Survey No.64, Hissa No.4B part, (As per computerized 7/12 extract, Survey No./Hissa No.64/4/B), Horambewadi Road, Near Panval Phata, at Mouje Panval, Tal/Dist Ratnagiri – 415 639 from respondent no.2 in compliance of order dated 17th March 2023.

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 the respondent no.1 through its Proprietor (the respondent no.2- Mr. Vishwas Kundaji Kadu) and the respondent no.2 Mrs. Shanta Vishwas Kadu stood as Guarantors. The petitioner has considered the request and sanctioned Term Loan Facility of Rs.14 lakhs against hypothecation of machinery and cash credit facility of Rs.12 lakhs against hypothecation of stocks vide its sanction letter dated 11th March 2019. 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. The petitioner has also sent legal notice through Advocate and has recalled the outstanding dues dated 22nd November 2019. Even after expiry of the statutory period of 60 days, the respondent nos.1 to 3 failed and neglected to pay the outstanding dues. The petitioner, thereafter, has taken symbolic possession of the secured assets by completing service by Registered Post, pasting and published the Possession Notice in two newspapers – one in English and another in vernacular language. 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 vide order dated 17th March 2023. In pursuant of the order dated 17th March 2023, the Mandal Officer, Khedshi, Taluka Ratnagiri, by its letter dated 20th June 2023 informed the respondent nos.1 to 3 that the date 30th June 2023 is fixed for taking physical possession of the secured assets to the Bank's authorized officer of the petitioner. Pursuant thereto on 30th June 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, on 4th July 2023, at around 6.30 p.m., 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 on 5th July 2023 being First Information Report No.0116 of 2023 with the respondent no.5 – Ratnagiri Rural Police Station, Ratnagiri under Sections 188, 447, 504, 427 read with 34 of the Indian Penal Code. The petitioner also followed up with the office of respondents, seeking necessary assistance for repossession of the secured assets. 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 nos.1 to 3 and handing over the same back to the petitioner.

5. Mr. O. A. Das, learned counsel for the petitioner submitted that respondent no. 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).

6. He submitted that there is no need for a fresh order to be passed by the District Magistrate and District Collector, Ratnagiri 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, Ratnagiri Home Department and re-institute the possession of secured assets to secured creditors.

7. Mrs. Tanu Bhatia, 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 has lost the possession.

8. 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.

9. 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.

10. 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)

11. 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)

12. 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.

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

ORDER

(A) The Writ Petition is allowed. The Respondent Nos.5 and 6 are directed to execute the Order dated 17th March 2023 passed by the Respondent No. 6 under Section 14 of the SARFAESI Act by taking back possession of the secured assets viz. House No.973 and 979 in Plot No.2, Survey No.64, Hissa No.4B part, (As per computerized 7/12 extract, Survey No./Hissa No.64/4/B), Horambewadi Road, Near Panval Phata, at Mouje Panval, Tal/Dist Ratnagiri – 415 639, and handing it back 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.]**