IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17431 OF 2024

AU SMALL FINANCE BANK LIMITED ..PETITIONER
VS.
STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

Mr. Sanjay Anabhawane a/w. Ms. Tejaswi Nanche, Ms. Komal Bhosale for petitioner.

Mr. B. V. Samant, Addl. GP a/w. Ms. Tejas Kapre for respondent nos. 1 to 5.

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

DATE : 16th 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 and 3, to hand over possession of the "secured assets" i.e. the property being No.475, Survey No.22/2/4, Sonarpada Road, Village- Kamatghar, Taluka-Bhiwandi, District-Thane along with structure standing thereon.

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. The petitioner had granted credit facilities to the respondent nos.6 to 8 of Rs.14 lakhs. Since there was default in repayment of credit facilities, the account of the respondent nos. 6 to 8 was classified as "Non Performing Assets" (NPA). Thereafter, the petitioner issued a demand notice dated 31st July 2019, 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 respondent nos. 6 to 8 to repay the outstanding amount as mentioned in the said demand notice along with interest thereon within 60 days from the receipt of the notice.

4. On failure of respondent nos. 6 to 8 to comply with the demand notice under Section 13(2) of the SARFAESI Act and not raising any objections under Section 13(3-A) of the SARFAESI Act, an application under Section 14 of the SARFAESI 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 1st October 2020 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 2nd December 2021, the respondent no.3 took physical possession of the secured assets and handed over the same to the authorized officer of the petitioner. At the time of taking possession of the secured assets, the respondent nos.6 to 8 were present at site.

5. As per the petitioner's case, during the last visit for the purpose of sale and revaluation of the secured assets, the petitioner found that the respondent nos. 6 to 8 have broken the seal put by the respondent no.3 and trespassed in the secured asset. Hence, the petitioner lodged a police complaint dated 12th July 2024. However, according to the petitioner, no further action has been taken by the police despite complaint being lodged. Thereafter, the petitioner has also filed application for repossession of the secured asset with the respondent no.2 for repossession of the secured asset on the ground that the respondent nos.6 to 8 have criminally trespassed in the said secured asset, however, the respondent no.2 declined to pass 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 by respondent nos. 6 to 8 and handing over the same back to the petitioner.

6. Mr. Sanjay Anabhawane, learned counsel for the petitioner submitted that respondent nos. 2 and 3 should forthwith remove the respondent nos. 6 to 8 from the secured assets and hand over the physical possession to the petitioner. So also, the respondent no.4 and 5 should initiate prosecution against the respondent nos. 6 to 8. Mr. Anabhawane 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 member of the Division Bench 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 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.

8. Mr. B. V. Samant, Additional 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.

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

(i) The Writ Petition is allowed. The Respondent Nos.2 and 3 are directed to execute the Order dated 1st October 2020 passed by the respondent No. 2 under Section 14 of the SARFAESI Act by taking back possession of the secured assets viz. the property being No.475, Survey No.22/2/4, Sonarpada Road, Village- Kamatghar, Taluka-Bhiwandi, District-Thane along with structure standing thereon, 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.]**