KANCHAN VINOD MAYEKAR
Digitally signed by KANCHAN VINOD MAYEKAR
Date: 2024.10.04 18:49:13 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12195 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 13298 OF 2024
IN
WRIT PETITION NO. 12195 OF 2024

Late Shri Sahebrao Marutrao Patil
(Since deceased) & Ors. ….. **Petitioners/ Applicants**

VERSUS

Dr. Annasaheb Chougule Urban
Co-operative Bank Ltd. & Ors. ….. **Respondents**

Mr. Vijay V. Chandavale for the Petitioners/Applicants.

Mr. Aayush Kothari a/w. Mr. Nikhil Rajani i/b. V. Deshpande & Co. for the Respondent No.1 – Bank.

Mr. B. V. Samant, Addl. G.P. a/w. Mr. S. P. Kamble, A.G.P. for the State.

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

DATE : 1st OCTOBER, 2024

P.C. :-

The challenge raised in this writ petition is to the order dated 4th April 2024 passed by the Debts Recovery Appellate Tribunal thereby allowing the appeal preferred by the respondent no.1 and dismissing the Securitisation Application that was filed by the petitioners.

2. The petitioner no.2 is the borrower who had approached the respondent no.1 for grant of credit facility. After executing various documents and also creating an equitable mortgage in favour of the respondent no.1 on 6th July 2006, she deposited the title deeds in respect of the mortgaged property with the respondent no.1. Her husband, since deceased as well as the petitioner no.3 stood as guarantors. Since the repayment was not made regularly, the demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued on 24th November 2012. The borrower did not make any representation to the aforesaid notice issued under Section 13(2) of the Act of 2002. Further steps were taken by the respondent no.1 and on 15th February 2013, a possession notice came to be issued. The authorized officer took symbolic possession of the mortgage property and thereafter the said property came to be sold. Sale

Certificate dated 12th June 2013 came to be issued in favour of the respondent no.2. The petitioners approached the Debts Recovery Tribunal challenging the measures taken by the respondent no.1.

3. In the initial round of litigation, the Debts Recovery Appellate Tribunal remanded the proceedings to the Debts Recovery Tribunal by its order dated 5th December 2013 and directed the Securitisation Application to be decided afresh. After remand, the Debts Recovery Tribunal held that the borrower did not dispute the mortgage deed and infact admitted its execution. She also admitted the signing and execution of the Demand Promissory Note, Letter of Lien and Set Off. The Tribunal however found that the measures taken by the respondent no.1 under Section 13(4) of the Act of 2002 were not in accordance with the Act of 2002 and the Rules framed thereunder. Having executed the Sale Certificate in favour of the auction purchaser, it was held that the secured creditor lost its right, title or interest in the immoveable property and therefore the steps taken by it

under Section 13(4) of the Act of 2002 were not legal. The respondent no.1 being aggrieved filed an appeal. The Debts Recovery Appellate Tribunal by relying upon the decision in *(2018) 15 SCC 99 (ITC Limited vs. Blue Coast Hotels Ltd. & Ors.)* held that the creditor did not lose its right to enforce an action under Section 14 of the Act of 2002 after taking symbolic possession of the property. The appeal was therefore allowed and the Securitisation Application preferred by the borrower came to be dismissed. Being aggrieved, the petitioners have challenged the said decision.

4. The learned counsel for the petitioners reiterated the submissions that were urged before the Debts Recovery Appellate Tribunal. It was submitted that the mortgage deed was not a valid document and on that basis the steps taken by the creditor for enforcing the security interest could not be supported. Even the execution of the Sale Certificate was illegal as the borrower continued in possession of the secured asset. The Tribunal had rightly found that on the basis of symbolic possession it was not

permissible for the secured creditor to enforce its security interest. Since the borrower continued to remain in possession even today, it was not permissible for the respondent no.1 to take steps under Section 14 of the Act of 2002. The Tribunal having rightly held in favour of the petitioners, the Debts Recovery Appellate Tribunal was not justified in interferring with that order. It was thus submitted that the order dated 4th April 2024 passed by the Debts Recovery Appellate Tribunal be set aside and the order passed by the Tribunal of 3rd March 2018 be restored.

5. The learned counsel for the respondent no.1 supported the order passed by the Debts Recovery Appellate Tribunal. According to him, even the Tribunal in its order dated 3rd March 2018 had held that the mortgage executed in favour of the respondent no.1 was a valid document. The adverse findings recorded by the Tribunal were not challenged by the petitioners. In view of the decision in *ITC Limited* (supra), the Debts Recovery Appellate Tribunal rightly held that the creditor could enforce the security interest after taking symbolic possession of

the property. It was thus submitted that there was no case made out to interfere in exercise of writ jurisdiction.

6. Having heard the learned counsel for the parties and having perused the documents on record, we do not find any legal ground to interfere with the order passed by the Debts Recovery Appellate Tribunal. It is to be noted that after remand, the Tribunal reconsidered the entire matter and recorded the finding that the borrower did not make any representation against the notice issued under Section 13(2) of the Act of 2002. She also did not dispute the mortgage deed and also admitted the signing and execution of the Demand Promissory Note, Letter of Lien and Set Off. It however held that the measures taken by the creditor under Section 13(4) of the Act of 2002 were not in accordance with the provisions of the Act of 2002 and the Rules made thereunder. While the creditor challenged this order by filing an appeal before the Debts Recovery Appellate Tribunal, the borrower did not question the findings recorded by the Tribunal against her. The said findings of the Tribunal have

therefore attained finality. It would not be permissible now for the borrower to question the execution of the mortgage deed and other documents. The said findings would operate against the petitioners having gone unchallenged.

7. The only ground on which the Tribunal held against the creditor was that after issuance of the Sale Certificate and its registration, the creditor failed to have any right, title or interest in the property sold. While doing so, the Tribunal had relied upon the decision in *2015 SCC OnLine 7791 (Blue Coast Hotels Ltd. vs. IFCI Ltd. & Ors.)*. However this decision came to be reversed by the Supreme Court in *ITC Limited* (supra). It has been held by the Supreme Court that on the basis of a constructive or symbolic possession, the creditor could maintain an action under Section 14 of the Act of 2002. The creditor did not lose its right as a creditor to enforce action taken under Section 13(4) of the Act of 2002. There is no reason whatsoever to take a different view since the Debts Recovery Appellate Tribunal has rightly relied upon the decision in *ITC Limited*

(supra).

8. In the present case the symbolic possession was taken on 22nd February 2013 and with a view to handover possession of the subject property to the auction purchaser, application under Section 14 of the Act of 2002 was filed. The Magistrate accordingly granted that application and it is on that basis that the possession of the subject property was being taken from the petitioners. Infact, the petitioners have enjoyed possession of the said property for a period of more than 10 years since the Sale Certificate executed in favour of the auction purchaser is dated 12th June 2013.

9. For aforesaid reasons, we do not find any case made out to interfere in exercise of writ jurisdiction. The Writ Petition is therefore dismissed. No order as to costs.

10. Pending Interim Application is also disposed of.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**