IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2012 OF 2024
WITH
INTERIM APPLICATION(L)NO.15104 OF 2024
IN
WRIT PETITION NO.2012 OF 2024

Smt Bindu Ajay Bhatt ..Petitioner/Applicant

Versus

The Board of Directors of
Chembur Nagrik Sahakari
Bank Ltd & Ors ..Respondents

Mr.Mathews Nedumpara, *with Ms.Hemali Kurne, Rahul Yadav, Akhilesh Nair i/b Nedumpara & Nedumpara, Advocates for the Petitioner.*

Ms.Saswati Deb, *Advocates for Respondent No.1.*

Smt Bindu Ajay Bhatt, *is present in Court.*

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : MAY 3, 2024

P.C.

Mentioned. Taken out of turn.

2 Writ Petition No.2012 of 2024 is not on Board. With the consent of parties taken on Board.

3 The above Writ Petition is filed inter alia seeking a relief to declare that the borrower firm is a MSME within the meaning of Sections 7 and 8 of the MSMED Act, 2006 and entitled to the benefits of the said Act and in particular the Notification S. O. 1432 (E) dated 29th May, 2015. Mr.Nedumpara fairly submitted that though these are the reliefs which are sought in the present Writ Petition, the real issue is that the Chembur Nagrik Sahakari Bank Ltd has sought to auction the secured asset today without following the mandatory provisions of the SARFAESI Act and the Rules framed thereunder. In that regard, he brought to our attention the notice at page 30 of the above Interim Application conducting the sale of the secured asset, and which is dated 12th April, 2024. Mr. Nedumpara submitted that it is an admitted fact that this is the first auction that has been held by the bank, and hence, under Rule 9 (1) of the Security Interest (Enforcement) Rules, 2002, the bank has to give a minimum 30 days notice before conducting the sale of the secured asset. This has admittedly not been done, and therefore, the auction held today is wholly illegal.

4 The learned counsel for the bank fairly did not dispute this factual position. On instructions, she informs the Court that

this in fact is the first auction that is conducted in relation to the secured asset which forms the subject matter of the present Petition. Once this is the factual situation before us, we find that the auction could never have been conducted and concluded today as admittedly 30 days have not passed from the date of publication of sale notice. On this limited ground, the auction conducted today is hereby set aside. The bank is however be free to issue a fresh auction notice by strictly complying with the provisions of the SARFAESI Act and the Rules framed thereunder.

5 At this stage, the bank submitted that they do not have the address of the Petitioner to issue a fresh notice. Mr.Nedumpara, on the instructions of his client who is present in Court stated that she does not have a permanent address as the only address where she was residing was the secured asset, of which physical possession has already been taken by the bank. On taking instructions, Mr. Nedumpara stated that service of the notice can be served on the society where the secured asset is situated and she [the Petitioner], would collect the requisite notice from the office of the said society. The said statement is accepted.

6 The above Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

7 In view of the disposal of the above Writ Petition, nothing survives in the above Interim Application and the same is disposed of accordingly.

8 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] **[B. P. COLABAWALLA, J.]**