



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2953 OF 2024

KIRAN W/O RAVINDRA NAKASKAR

VS

RAMBHAU S/O DAULATRAO PATIL AND ORS.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms (Dr.) R.S. Sirpurkar, Advocate for the Petitioner/s
Ms R.P. Jog, Advocate for the respondent Nos.1 to 4
Mr A.S. Deshpande, Advocate for the respondent Nos.5 to 7/Bank

CORAM : ANIL S. KILOR, J.

DATE : 09.05.2024

1. Heard.
2. This writ petition takes exception to the judgment and order dated 27.02.2024 passed by the District Judge-3, Akola, rejecting the appeal preferred by the petitioner, challenging the denial of grant of temporary injunction in favour of the petitioner in a suit filed by her for partition and possession of the land in dispute.
3. As far as the temporary injunction sought by the petitioner is concerned, it is mainly against the respondent Nos.5 to 7/bank. It is prayed that the bank shall not take possession of plot No.20, Survey No.5/1, admesasuring 1508 sq. feet at village Sukapur within the local limits of Municipal Corporation, Akola.
4. The proceeding as per the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (for short “SARFAESI Act”) was initiated against this plot. Both the Courts below denied the prayer of the petitioner for grant of temporary injunction on the ground that *prima facie* the petitioner failed to establish that the said property is an ancestral property; and secondly, the balance of convenience lies more in favour of the bank.

5. The petitioner is seeking 1/5th share in the plot, which, the bank is intending to put to auction for recovery of the amount against the respondent Nos.1 to 4 under the SARFAESI Act.

6. The petitioner, on 03.05.2024 made a statement that as far as her 1/5th share is concerned, if the protection is granted to the extent of 1/5th share, she is ready to deposit Rs.50,00,000/- in the Court i.e. 1/5th share of the total amount of recovery which is about Rs.2,50,00,000/-.

7. However, after service of notice on the bank, the bank came up with a proposal that whatever consideration the bank will receive in auction, the bank will deposit 1/5th share of it in the trial Court, which will be subject to result of the suit.

8. As both the Courts below have concurrently held that the balance of convenience lies in favour of the bank and since I am also of the same opinion, I consider that if the proposal of the bank is accepted, the interest of the petitioner can very well be protected.

9. The petitioner and the respondents are not disputing the fact that the bank has already taken paper possession, which is

sufficient for holding the auction. In the circumstances, the learned counsel for the petitioner and the learned counsel for the respondent Nos.1 to 4, upon instructions, have undertaken that after the auction and issuance of sale certificate, they would handover the possession of the above referred plot i.e. plot No.20, to the bank.

10. In the circumstances, the writ petition is **disposed of** accepting the above referred proposal of the bank as recorded in paragraph 7 of this order.

11. Further the undertaking given by the petitioner and the respondent Nos.1 to 4, is accepted as regards handing over the possession after issuance of sale certificate and on deposit of 1/5th share of the petitioner by the bank, in the trial Court.

[ANIL S. KILOR, J.]