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

CRIMINAL WRIT PETITION NO. 597/2023
ICICI Home Finance Co. Ltd.
VS.
The Superintendent of Police, Amravati (Rural) and Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. V. S. Giramkar with Mr. Kushal Jain, Advocates for Petitioner.
Mr. A. B. Badar, A.P.P. for Respondents/State.
Mr. H. A. Biherani, Advocate for Respondent Nos.3 and 4.

CORAM : VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 10/10/2024.

. Heard.

2. Petition is originated on account of allegation that the borrower has forcibly restored the possession of secured assets despite the possession was already obtained by secured creditor by process of law. Having confronted with the allegation of sheer illegality, we have issued notice to the respondent Nos.3 and 4, who are the principal borrowers. They have denied of taking forcible possession but it has been pleaded that possession is with respondent No.5, who is their son. In such a background, as it is a commercial transaction, we asked the parties to settle the matter with clear indication that if it is not settled, this Court will be constrained to take steps to uphold the process of law by setting aside the wrong deeds.

3. In such background, borrowers i.e. respondent Nos. 3 and 4 made a settlement proposal to the petitioner creditor bank. The matter was amicably resolved by

arriving on the settlement terms, which are incorporated in the written undertaking filed by respondent Nos.3 to 5 before us. Principally, the creditor bank has agreed to settle all pending loans in total sum of Rs.30,00,000/- to be paid in three equal monthly installments as detailed in the undertaking with grace period of seven days for each installment. The undertaking is signed by respondent Nos.3 to 5 and sworn by principal borrower i.e. respondent No.3. Today, respondent No.3 is present before us and by filing separate affidavit stated that undertaking is signed by respondent Nos.4 and 5 and they have authorized him to make such a statement on their behalf in the Court. The authorized representative of the creditor bank Gaurav Mishra, Regional Legal Manager is present before us, who made a statement that he has gone through the written undertaking and the contents are correct. He asserted that the bank has agreed to settle all the claims against the principal borrower for some of Rs.30,00,000/- with a repayment schedule as incorporated therein.

4. Clause - j of the undertaking specifies that in case, the respondent borrower and their son failed to pay agreed sum of Rs.30,00,000/-, the petitioner will be free to get possession of the secured assets. As a matter of law, the petitioners are entitled to take possession, which need not be reasserted. Therefore, it is necessary to direct respondents to deliver peaceful possession at their own, in case the conditions i.e. payment schedule has been breached.

5. In view of above, we accept the written undertaking given to the Court, which shall be binding on them. We also record that it is agreed by the respondent No.3 for himself and respondent Nos.4 and 5 that in case of single default, the respondents would deliver peaceful possession to the creditor bank forthwith.

6. Both learned Counsel would submit that after compliance of the terms of undertaking, the borrowers would withdraw the civil suit filed by respondent No.5 against the bank as well as the bank would cooperate in the proceedings for quashing of the prosecution which they had filed against respondent Nos.3 and 4.

7. The petition stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.) **(VINAY JOSHI, J.)**