**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

11 WRIT PETITION NO. 8930 OF 2024

G.S. MAHANAGAR CO OP BANK LTD THROUGH ITS AUTHORIZED OFFICER SHIVAJI PARSHURAM KHANDAGALE
VERSUS
THE DISTRICT MAGISTRATE AND OTHERS
...
Ms. Sadhna Deshmukh, Advocate for the petitiioner.
Mr. S.K. Tambe, A.G.P. for respondent Nos. 1 to 3.
Mr. K.J. Suryawanshi, Advocate for respondent No.5.
...

CORAM : R.G. AVACHAT AND SANDIPKUMAR C. MORE, JJ.

DATED : 1 APRIL 2025

P.C. :

1. This petition, under Article 226 of the Consitution of India is filed for the following main relief :

> "B] By issuing an appropriate writ of mandamus or any other appropriate writ, order or direction in the like nature respondent No.2, i.e. Tahsildar Aurangabad, be directed to execute the order dt.24.07.2019 passed by the respondent No.1 i.e. the District Magistrate Aurangabad, by restituting the possession of secured asset mentioned below to the petitioner :
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> *1) Plot no. 60 and 61 adm. 4856.00 sq. mtrs. including factory shed, office building and other structures standing thereon adm. 20,632 sq.ft. Situated at and other structures standing thereon adm. 20,632 sq. ft. situated at MIDC, Chikalthana, Aurangabad*
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> *2) Plot No.H-15 adm. 1155.95 sq.mtrs. including factory shed, office building and other structures standing tehreon adm. 8783 sq. ft. situated at MIDC, Chikalthana, Aurangabad".*

2. The petitioner is a multi-State Co-operative Bank. It is it's case that it advanced secured loan to respondent No.4, a private limited company. Respondent Nos.4A and No.4B were it's Directors and borrowers as well, while respondent Nos. 5 to 10 stood surety to the loan. Since the borrowers defaulted, the petitioner bank initiated recovery proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). The petitioner bank took assistance of respondent Nos.1 and 2 for taking possession of the secured assets. An order under Section 14 of the SARFAESI Act, 2002 was thus passed. On 25.06.2024 an application for possession of the secured assets was preferred to Tahsildar in compliance with the order dated 24.07.2019. Tahsildar took possession of the secured assets and handed it over to the petitioner bank. When the bank officer alongwith two guards reached to the property (secured assets), respondent Nos.4A and 4B obstructed them. They broke open the locks and seal put on the secured assets. Respondent No.4A took possession of the secured assets, unauthorisely. The petitioner bank, has therefore, approached this Court.

3. Notices were issued. None appeared for respondent Nos.4, 4A and 4B.

4. Learned Advocate for the petitioner made submissions consistent with the averments in the petition. She relied on the judgment of Division Bench of this Court in the case of ***The Nashik Merchant Co-operative Bank vs the District Collector, Jalna and others*** in Writ Petition No. 10069 of 2022 and urged for allowing the petition.

5. We have considered the submissions advanced. It is reiterated that in spite of service of notices, none appeared for respondent Nos.4, 4A and 4B. This Court in the case of ***The Nashik Merchant Co-operative Bank vs District Collector, Jalna*** (supra) observed as below :

> *"16. At this stage, a reference can be made to the order passed by Division Bench of this Court in Writ Petition No. 8674/2021 in the matter of Bank of Baroda Vs. The State of Maharashtra and Ors. dated 24-02- 2022 wherein, in similar set of facts, the directions were given against the District Magistrate to entertain the second application of the petitioner filed under section 14 of the SARFAESI Act.*
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> *17. Mr S.V. Adwant, learned advocate appearing for the petitioner also places reliance on the Judgment delivered by the Division Bench of High Court of Andhra Pradesh in case of M/s. Sri. Balaji Centrifugal Castings Vs. M/s ICICI Bank Limited. reported in (2018) SCC Online Hyd 368, wherein, it is held that there is no bar to secured creditor maintaining more than single application under section 14(1) of the SARFAESI Act for securing the possession of the very same secured assets.*
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> *18. The similar view has been reiterated by the High Court of Kerala in the matter of A.A. Kumaran Vs. Superintendent of Police, Thrissur and Ors. In WP (C)*

No. 5875 of 2022 dated 18-05-2022 wherein the court observed thus :-

> *21. Further, the present case reveals an instance where a person has taken the law into his hands by force and thereafter seeks the benefit of legal principles. If such actions are permitted to be perpetrated, rule of law will suffer immeasurably. The purport of the Act is to divest the owner of a property in the enforcement of security interest and initiate measures to wipe off the liability by resorting to measures including sale. If measures taken for dispossession and consequent sale are inter-meddled by persons like respondents 4 and 5, it would result in a mockery of the rule of law. The will of the people reflected through the legislation will be seriously infringed, if the court remains a mute spectator.*

6. The record indicates that the petitioner bank was put in possession of the secured assets in execution of the order under Section 14 of SARFAESI Act, 2002. Respondent Nos.4, 4A and 4B forcibly took possession of the secured assets. In view of the legal position that there being no bar for the creditor to move second application under Section 14 of the SARFAESI Act, 2002 and relying on the judgment in the case of The ***Nashik Merchant Co-operative Bank vs the District Collector, Jalna*** (supra), we allow the writ petition in terms of prayer clause 'B'.

(SANDIPKUMAR C. MORE, J.) **(R.G. AVACHAT,J.)**

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