

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3475 OF 2024

Shri Adinath Co-operative Bank Ltd.)
Ichalkaranji, through Authorized Officer)
Shri Nilesh Dadaso Bagane,)
Head Office – 7/23, 24, Adat Peth,)
Janta Chowk, Ichalkaranji,)
Tal-Hatkanangale, Dist. Kolhapur) .. Petitioner

Versus

1. The State of Maharashtra)
Through The District Magistrate,)
@ Collector, Kolhapur)
2. Tahasildar, Hatkangale)
3. Mandal Officer, Kabnoor,)
Tal-Hatkangale, Dist. Kolhapur)
4. Shri Yogesh Ashok Kadam)
Age - Adult, Occ. Business)
Prop. M/s. Shri Mahalaxmi Textiles,)
22/13333, Barshikar Chal, Ganesh Nagar,)
Shahapur, Ichalkaranji,)
Tal-Hatkanangale, Dist. Kolhapur)
5. Shri Dattatray Narhari Kadam,)
Age-Adult, Occ. Business,)
Address- As above.)
6. Shri Kalavati Narhari Kadam)
Age-Adult, Occ-Business)
Address-As above.)
7. Shri Balkrishna Narhari Kadam,)

- Age-Adult, Occ. Business,)
 Address- As above)
8. Shri Ashok Narhari Kadam since deceased)
 through Legal Heirs)
- 8A) Subhadra Ashok Kadam)
 Age-55, Occ. Household)
- 8B) Yogesh Ashok Kadam)
 Age-30, Occ. Service)
- 8C) Neha Tanaji Kaldade)
 Age-28, Occ. Household)
- 8A to 8C at R/o. 22/8333, Barshikar Chal)
 Ganeshnagar, Ichalkaranji,)
 Tal-Hatkangale, Dist. Kolhapur)
9. Shri Navnath Mohan Pawar)
 Age-Adult, Occ.-Business)
 Address- As above.)
10. Shri Chandrakant Narhari Kadam)
 Age-Adult, Occ.- Business)
 Address – As above.) ... Respondents

Mr. Sandeep Koregave a/w. Ms. Pallavi A Karanjkar, Advocates for the Petitioner.

Mr. N.C. Walimbe, Additional Government Pleader a/w. Mr. S.P. Kamble, Assistant Government Pleader for the Respondent Nos. 1 to 3

CORAM : A. S. CHANDURKAR &
 M. M. SATHAYE, JJ.

DATED : 26th FEBRUARY 2025

JUDGMENT (Per M. M. SATHAYE, J):

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for parties.

2. By this Petition, the Petitioner Co-operative Bank, is seeking a direction against the Respondent Nos. 1 to 3 to execute an order passed by the Respondent No. 1-Magistrate dated 23/02/2021 and re-instate the Petitioner in possession of the Secured Asset. The Respondent Nos. 4 to 10 are the borrowers who had taken loan from the Petitioner-Bank by mortgaging certain properties, which are secured assets. The borrowers did not repay the loan and their accounts become Non-Performing Assets (NPA). The Petitioner initiated proceedings under the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short “the said Act”) and notice under section 13(2) thereof was issued. Thereafter, the notice u/s. 13(4) of the said Act was issued. Since the borrowers obstructed taking of physical possession, the Petitioner filed an application under section 14 of the said Act and the Respondent No. 1-Magistrate passed the aforesaid order, pursuant to which the Petitioner was put in possession of the Secured Assets on 18/03/2021. The Petitioner thereafter appointed watchman on the site for supervising the secured assets. On 13/04/2021, the borrowers trespassed into the secured assets by breaking open the lock and entering it forcefully. The Petitioner therefore filed FIR No. 0107 of 2021 with concerned police station. The copies of panchanama taking possession of the secured assets and subsequent FIR after trespass has been produced on record. The Petitioner therefore again filed an Application under section 14 of the said Act, which came to be rejected under the communication/order dated 24/05/2023. It is in these

circumstances that the Petitioner-Bank has approached this Court seeking to quash and set aside the order dated 24/05/2023 and further seeking direction for re-instatement of the possession.

3. Notices were issued and the Respondent Nos. 4 to 7, 9 and 10 were served. The Respondent No. 8 was reported to be dead. The Petitioner-Bank took out an Application for bring legal heirs of the Respondent No. 8 on record being IA/14553/2024. The legal heirs of the Respondent No. 8 (Respondent Nos. 8A to 8C) were served through court bailiff. There is office note to that effect. By a separate order, legal heirs of Respondent No. 8 have been brought on record. Thus, the Respondent Nos. 4 to 10 are duly served. However, nobody appears for them.

4. The Petitioner has relied upon the judgment and order passed by this Court in the matter of same Petitioner - **Adinath Co-operative Bank Ltd., Ichalkaranji, Dist. Kolhapur vs The State of Maharashtra, Thr. The District Magistrate & Collector, Kolhapur & Ors.**¹ He submitted that the facts of the present case are squarely covered by the said judgment.

5. Learned Additional Government Pleader appearing for the Respondent Nos 1 to 3 was at pains to justify the impugned order of the Respondent Magistrate, however he could not distinguish the facts of the present case from the judgment relied upon.

6. In the matter of **Adinath Co-operative Bank Ltd., Ichalkaranji, Dist. Kolhapur (supra)** this Court has considered the settled view of this Court as laid down in the case of **Nashik Merchant Co-operative Bank vs. The District**

¹ Bombay High Court W.P. No. 3476 of 2024 Order dt. 09/10/2024.

Collector, Jalna & Ors.² followed by Kotak Mahindra Bank Ltd. & Anr. Vs. State of Maharashtra & Ors.³ where it is held that on the borrowers trespassing in the secured asset after it is taken in possession pursuant to an order under Section 14 of the said Act, the Magistrate can re-exercise its power. We find that the facts of the present case are squarely covered.

7. Hence following the said consistent view, the Petition is allowed in terms of prayer clause (a) which reads as under:

(a) This Hon'ble High Court be pleased to issue an appropriate writ of mandamus or any other appropriate writ, or order or direction in the like nature, the Respondent No. 1 to 3 be directed to execute the order passed by the Respondent No. 1 dated 23.02.2021 by restituting the possession of the secured assets to the Petitioner.

8. Rule is made absolute in above terms with no order as to costs.

All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)

2 High Court of Bombay in WP/10069/2022 decided on 28/02/2023

3 High Court of Bombay in WP/6805/2023 Order dt. 30.06.2023