Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2099 OF 2014

UCO Bank and others] Petitioners
versus
The State of Maharashtra and others] Respondents

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Mr. Hafeezur Rahman (through V.C.), for Petitioners.

Mr. Siddheshwar Kalel, A.P.P, for Respondent No.1 – State.

None for Respondent No.2.

Mr. Badole, P.S.I, Gokul Shirgaon Police Station, Kolhapur present.

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CORAM : M.S. KARNIK &
SHARMILA U. DESHMUKH, JJ

DATE : 29th SEPTEMBER, 2025.

ORAL ORDER: [PER M.S. KARNIK, J.]

1. Heard Mr. Rahman, learned Counsel for the petitioners and Mr. Kalel, learned A.P.P, for respondent No.1 – State. Though notice was duly served, none appears on behalf of respondent No.2.

2. This petition is of the year 2014.

3. This petition under Article 226 and 227 of the Constitution of India is filed by UCO Bank and it's officers praying for quashing the order dated 7th April, 2014 passed by the learned Judicial Magistrate First Class at Kolhapur in Regular Criminal Case No.244 of 2014. It is further prayed that the entire proceedings against the petitioners pertaining to Criminal Case No.244 of 2014 pending before the learned Judicial Magistrate First Class at Kolhapur be quashed and set aside.

4. This Court by an interim order dated 11th June, 2014 granted ad-interim relief in terms of prayer clauses (c) and (d). Consequently, the proceedings *qua* the petitioners before the Judicial Magistrate First Class at Kolhapur came to be stayed.

5. The brief facts are that respondent No.2 applied for loan with UCO Bank for which it mortgaged its immovable property. Loan amount was Rs. 138.00 lacs. Respondent No.2 made a default in the payment of loan and, therefore, the account was declared as Non Performing Asset. The UCO Bank issued a notice under section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") for recovery of the dues of Rs.1,39,04,050.60 on 23rd March, 2007. On 16th June, 2007, the notice was acknowledged by respondent No.2. On 28th June, 2007, symbolic possession of the mortgaged property was obtained by the petitioners. The petitioners then moved before the District

Magistrate at Kolhapur under section 14 of the SARFAESI Act for taking physical possession of the movable and immovable assets. The UCO Bank received an order to take physical possession of the above assets on 30th November, 2009. The petitioners took physical possession of the properties as per the order of the District Magistrate on 26th November, 2010. Respondent No.2 signed the panchanama.

6. The petitioners in pursuance to taking over the possession, assigned the debt to M/s. India S.M.E. Assets Reconstruction Co. Ltd under a valid and subsisting Assignment Agreement duly registered under section 3 of the SARFAESI alongwith all rights, title and interest in the financing documents on 31st December, 2010. An authorized officer of the M/s. India S.M.E. Assets Reconstruction Co. Ltd has prepared the panchanama recording the factum of taking possession of the properties. The said fact of assignment of debt was communicated by UCO Bank to respondent No.2 which was received by him. It is the contention of learned Counsel for the petitioners that respondent No.2 was aware of the due assignment which was communicated to respondent No.2 on 5th January, 2011. Respondent No.2 filed two applications before the Debt Recovery Tribunal, Pune, being S.A. No.36 of 2010 and 4 of 2011. The first one was dismissed on the ground of limitation and another one was pending.

7. Respondent No.2 filed a Regular Criminal Case No.244 of 2014 before the Judicial Magistrate First Class, Kolhapur against the petitioners and M/s.

India S.M.E. Assets Reconstruction Co. Ltd and others under sections 403, 405, 406 and 420 of the Indian Penal Code with the M.I.D.C, Gokul Shirgaon Police Station. In the said application, it is alleged that the petitioners have illegally sold the mortgaged properties belonging to respondent No.2 without following due procedure of law and completely to its detriment. It was, therefore, prayed that the process be issued against the petitioners under section 156 (3) of the Code of Criminal Procedure, 1973. The process came to be issued by the Judicial Magistrate First Class, Kolhapur on 7th April, 2014. Accordingly, concerned Police Officer of Gokul Shirgaon Police Station was directed to investigate the offence under section 156 (3) of the Cr. P.C and to file a report. Consequently, an F.I.R bearing No.42 of 2014 came to be lodged on 10th April, 2014.

8. Nobody appears on behalf of respondent No.2 though duly served. We have perused the copy of the criminal case filed by respondent No.2 against the petitioners. We find that for enforcement of the debt and for recovery of the loan amount, the petitioners proceeded against the mortgaged properties in terms of the provisions of the SARFAESI Act. Not only that but the debt was assigned to M/s. India S.M.E. Assets Reconstruction Co. Ltd under a valid and subsisting Assignment Agreement alongwith all its rights, title and interest in the financing documents. Respondent No.2 was aware of the due assignment of debt. The mortgaged property if at all sold, was sold by M/s. India S.M.E. Assets Reconstruction Co. Ltd. It is, therefore, evident that, if at all, respondent

No.2 has any grievance, it can only be against M/s. India S.M.E. Assets Reconstruction Co. Ltd, in whose favour the debt was assigned by the petitioners. Section 32 of the SARFAESI Act is relevant in the context of protection of action taken in good faith which reads thus;

> *"**32. Protection of action taken in good faith**._ No suit, prosecution or other legal proceeding shall lie against [the Reserve Bank or the Central Registry or any secured creditor or any of its officers] for anything done or omitted to be done in good faith under this Act".*

9. It is thus clear from the provisions of section 32 of the SARFAESI Act that no suit, prosecution or other legal proceedings shall lie against the secured creditor or any of its officers for anything done or omitted to be done in good faith under SARFAESI Act.

10. The UCO Bank took the symbolic possession and thereafter took the physical possession of the mortgaged assets. Respondent No.2 had resorted to proceedings under the SARFAESI Act by filing two applications. If at all, respondent No.2 was aggrieved by any action of sale of the secured asset by the petitioners or the company in whose favour the debt was assigned, it was for respondent No.2 to have adopted appropriate remedies under the SARFAESI Act if it was his case that sale/disposal of the mortgaged assets was not in accordance with the provisions of the SARFAESI Act. However, having regard to the express provisions of the SARFAESI Act and the protection granted to the secured creditor and it's officers under section 32 of the SARFAESI Act, in

the facts and circumstances of the present case, criminal action under the provisions mentioned in the criminal complaint was not warranted. The learned Judicial Magistrate First Class, therefore, committed error in issuing process against the petitioners, more so, when the debt was already assigned to M/s. India S.M.E. Assets Reconstruction Co. Ltd.

11. The present petition succeeds and the same is allowed in terms of prayer clauses (a) and (a-1).

[SHARMILA U. DESHMUKH. J.] **[M.S. KARNIK, J.]**