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JITENDRA SHANKAR NIJASURE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4491 OF 2024

Abhyudaya Co-Op. Bank Ltd. … Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

Madhur Rai i/b PRS Legal for the Petitioner.

Shri A.I. Patel, Addl. G.P. with Smt. V.R. Raje, AGP for the State – Respondent Nos.1 to 4.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.
DATE : 10TH SEPTEMBER, 2025.

ORDER :

1. By this Writ Petition, the Petitioner is seeking direction against Respondent Nos.2 to 4 to take measures in compliance of an order dated 9th February, 2017 passed by the District Magistrate within a time frame to be prescribed by this Court.

2. The facts briefly stated are as under:-

(i) The District Magistrate had passed the said Order dated 9th February, 2017 directing the Respondent No.4 - Mandal Adhikari

to take forcible possession of the mortgage property.

(ii) Thereafter, the Respondent No.4 issued notice on 5th March, 2021 to the occupants of the mortgage property.

(iii) The occupants through their Advocate issued legal notice on 18th March, 2021 to the various authorities raising the objections.

(iv) The Respondent No.4 did not take possession in view of the interim orders dated 5th April, 2017 passed in Regular Civil Suit Nos.501 of 2016, 503 of 2016 and 505 of 2016.

(v) The Petitioner through its Advocate issued a letter dated 9th March, 2022 to the Respondent Nos. 2 to 4 inter alia calling them to comply with statutory duty under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").

(vi) In view of the non compliance of the said Order of the District Magistrate dated 9th February, 2017 by the Respondent Nos.2 to 4, the present Writ Petition has been filed.

3. The learned Counsel appearing for the Petitioner has referred to the Order dated 5th April, 2017 passed by the 5th Civil Judge, J.D., Kalyan in Regular Civil Suit Nos. 501 of 2016, 503 of 2016 and 505 of 2016. He has in particular referred to the operative part of the said Order. He has submitted that by the said Order the Defendant Nos.1 to 5 and their agents, servants or anybody acting on behalf of them were temporarily restrained from dispossessing the Plaintiff from the Suit premises without following due process of law and disconnecting the essential supply till final disposal of the Suit. He has submitted that due process of law has been followed under Section 14 of the SARFAESI Act by the Petitioner. The learned District Magistrate who has by the said Order dated 9th February, 2017 directed the taking of possession of the mortgage property i.e. the Suit premises in the aforementioned Suits in which the said Orders dated 5th April, 2017 have been passed.

4. The learned Counsel for the Petitioner has submitted that the Respondent No.4 has failed to take possession in compliance with the Order dated 9th February, 2017 passed by the learned District Magistrate by placing reliance upon the said Orders dated 5th April, 2017. He has submitted that this is an erroneous reliance placed by

the Respondent No.4 – Mandal Adhikari who was bound to comply with the Order dated 9th February, 2017 passed by the learned District Magistrate. He has accordingly submitted that direction be issued to Respondent Nos.2 to 4 to take measures in compliance with the said Order dated 9th February, 2017 passed by the learned District Magistrate.

5. The learned Additional Government Pleader appearing for the Respondent Nos. 1 to 4 has referred to the Affidavit in Reply filed on behalf of the Respondent No.3 dated 3rd July, 2024 and in particular Exhibit 1 to the said Affidavit in Reply. He has submitted that at Exhibit 1 is the Notice dated 14th June, 2024 of the Respondents to take possession of the mortgage properties in compliance with the Order of the learned District Magistrate dated 9th February, 2017. He has submitted that the Plaintiff in the Regular Civil Suit Nos. 501 of 2016, 503 of 2016 and 505 of 2016 had upon receipt of notice issued contempt notice dated 14th June, 2024. He has accordingly submitted that in view of the contempt notice issued, the Respondents have not taken possession of the mortgage properties.

6. Having considered the submissions, the Orders dated 5th April,

2017 passed by the 5th Civil Judge, JD, Kalyan had only restrained the Defendant Nos.1 to 5 in the Regular Civil Suit Nos. 501 of 2016, 503 of 2016 and 505 of 2016 from dispossessing the Plaintiff from the secured premises / mortgage properties without following due process of law and disconnecting the essential supply till final disposal of the Suit.

7. Accordingly, the Respondents could dispossess the Plaintiff from the Suit by following due process of law which would include under the provisions of the SARFAESI Act, in particular Section 14 thereof. An Order has been passed by the learned District Magistrate dated 9th February, 2017 under Section 14 of the SARFAESI Act directing the Respondent No.4 to take possession of the mortgage property.

8. In our view, the said Orders dated 5th April, 2017 passed by the learned Civil Judge, JD, Kalyan, do not come in the way of the Tahasildar, Kalyan / Mandal Adhikari taking possession of the mortgage properties.

9. The Plaintiff in the aforementioned Suits cannot come in

the way of the Tahasildar, Kalyan / Mandal Adhikari taking possession of the mortgage properties. It is pertinent to note that the Plaintiff had issued a contempt notice to the Mandal Adhikari when served with the notice for taking possession of the mortgage properties viz. notice dated 14th June, 2024.

10. In view thereof, the Petition is required to be allowed and we pass the following Order:-

(i) The Respondent Nos.2 to 4 shall take measures in compliance of Order dated 9th February, 2017 passed by the learned District Magistrate within a period of four weeks from today.

(ii) The Police Assistance shall be provided to Respondent Nos.2 to 4 for the taking possession of the mortgage properties within the aforementioned time frame.

(iii) The Petition is accordingly disposed of. There shall be no order as to costs.

[FARHAN P. DUBASH, J.] **[R.I. CHAGLA J.]**