

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

WRIT PETITION NO. 19058 OF 2024

AU Small Finance Bank Ltd.	..PETITIONER
VS.	
STATE OF MAHARASHTRA & ORS.	..RESPONDENTS

Mr. Sanjay Anabhawane, i/b Ms. Medha Rane, Advocates for the Petitioner.

Mr. N.C.Walimbe, Addl.G.P with Mr. S.P. Kamble, AGP, for the Respondent Nos.1 to 5 in both Petitions.

**CORAM : A. S. CHANDURKAR &
DR. NEELA GOKHALE, JJ.**

DATE : 8th MAY 2025.

P.C. :

1 The Petitioner places reliance on the order dated 3rd October 2024 passed by this Court in the matter of ***State Bank of India v. State of Maharashtra & Ors¹***.

2 The question that arises for consideration in the present Writ Petition is whether this Court can grant directions to the District Magistrate and/or the Tahsildar, to re-execute the order passed under Section 14 and to hand over the possession of secured assets to the secured creditor.

3 According to us, this question is no more *res integra* and

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is covered by the decision of the Division Bench of this Court in the case of *Nashik Merchant Co-operative Bank* (supra). Paragraph 20 of the said order reads as under:-

20. The uncontroverted factual aspects in present matter depict that the respondent Nos.5 and 6 have devised novel, unimaginable and unsustainable modus operandi to defeat ends of justice and fair play. It is not only the matter of physical altercation, but would tantamount to assault on the law and statute. They have the audacity to overrule the law. The growing tendency of overpowering the law cannot be tolerated. In peculiar facts and circumstances of this case, we are inclined to exercise powers under Article 226 of the Constitution of India to protect the rule of law and deprecate rising tendency of using criminal force against recovery proceeding undertaken by the financial institutions in terms of SARFAESI Act. We do not find any prohibition under the scheme of the SARFAESI Act that comes in the way of District Magistrate or his delegate to re-exercise the powers to execute the orders passed under section 14.

(Emphasis supplied)

4 Further, the Division Bench of this Court in *Kotak Mahindra Bank Ltd.* (supra) has followed the decision of *Nashik Merchant Co-operative Bank* (supra). The paragraph 13 of the said order reads as under:-

13. Considering the law laid down by the Division Bench of this Court and referred to by us above, we are unable to agree with the submission made by the learned AGP that the District Magistrate does not have the power to re-execute his own order or that he has become functus officio. If we were to take the view as propounded by the learned AGP it would lead to a complete chaos. We have no hesitation in stating that the borrowers have devised a novel, unimaginable and unsustainable modus operandi to defeat the ends of justice. It is not only the matter of physical altercation by assaulting the security guard appointed by the Petitioner Bank and breaking open the lock and seal affixed on the secured asset which is wholly illegal, but the same would also tantamount to an assault on the law and the statute itself. If, after orders are passed under section 14 for dispossession of the borrower, and the same are inter-meddled with by any person including the borrower, the same would result in a mockery of the rule of law. In such a situation the court cannot and should not remain a mute spectator and allow the illegality to continue. The tendency of trying to overreach the law as well as the orders passed by Judicial Authorities has to be nipped in the bud right away, lest the

rule of law shall suffer.”

(Emphasis supplied)

5 Therefore, considering the facts of the present proceedings and in view of the law as held in the case of *Nashik Merchant Co-operative Bank* (supra) and *Kotak Mahindra Bank Ltd.* (supra), followed in the matter of *State Bank of India (Supra)*, we are of the considered view that this is a fit case to exercise our jurisdiction under Article 226 of the Constitution of India and allow the Writ Petition.

6 In the circumstances, we pass the following order.

ORDER

(i) The Writ Petition is allowed in terms of prayer Clause (b) which reads as under:-

“(b) That this Hon'ble Court be pleased to issue appropriate directions in the nature of writ of Mandamus against the Respondent Nos 2 to 3, inter-alia, directing them to take appropriate steps for restitution of the secured asset viz, RESIDENTIAL AND INDUSTRIAL STRUCTURE ON SR. NO. 30, HISSA NO. 14, DHAYARI, TALUKA HAVELI, PUNE by executing the Order dated 15.07.2019 with reasonable force which includes the breaking open of lock (s), wherever necessary and also direct the concerned Police Station i.e. Respondent No. 5 to provide help/assistance in taking physical possession of the Secured Asset;”

[DR. NEELA GOKHALE, J.]

[A.S. CHANDURKAR, J.]