

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10889 OF 2024**

Auxilo Finserve Private
Limited & Anr. ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents
WITH

INTERIM APPLICATION NO. 12978 OF 2024

Chaitanya Bahuuddeshiya Shikshan
Prasarak Mandal & Ors. ... Applicants

In the matter between

Auxilo Finserve Private
Limited & Anr. ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Charles Desouza a/w. Mr. Nikhil Rajani and Mr. Ajay Deshmane i/b M/s. V. Deshpande and Co. for the Petitioners.
Mr. Samir Vaidya (through VC) a/w. Ms Latika Kabad & Ms Kavita Vijapure i/b Mr. Dhairyasheel Sutar for the Applicants/Intervenors.
Mr. B.V. Samant, Addl. G.P. a/w. Mr. S.P. Kamble, AGP for the Respondent /State.

**CORAM : M.S. KARNIK &
N.R. BORKAR, J.J.
DATE : 27th JUNE, 2025.**

P.C.

1. Heard learned counsel for the parties.
2. Mr. Vaidya, learned counsel for the applicants / intervenors, submitted that the applicants/intervenors are

willing to pay sum of Rs.50 Lakhs and requests for continuation of occupation of secured asset. In the facts and circumstances of the present case, we are not inclined to accede to request of Mr. Vaidya to continue with the occupation of the secured asset for the reasons stated hereafter.

3. The facts in brief are as under:

On 13th September 2021, the petitioner-secured creditors issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) calling upon the applicants/borrowers to repay jointly or severally a sum of Rs.5,06,13,944.70 by 7th September 2021. The payment was not cleared. On 15th February 2023, the applicants/intervenors executed an undertaking and stated that in case the applicants failed to repay the petitioners' outstanding dues they will handover the possession of the secured asset to them. This undertaking is breached.

4. Again on 29th March 2023, the applicants/intervenors filed an undertaking before the Debts Recovery Tribunal to deposit a sum of Rs. 1 crore in four installments. Even this undertaking was breached. On 8th October 2024, by a Memorandum of Understanding (MOU) between the applicants/intervenors and the petitioners, parties agreed to foreclose the entire outstanding dues of the petitioners by paying Rs.4,50,00,000/- to them, which again was breached by the applicants/intervenors.

5. On 8th October 2024, the applicants/intervenors submitted to this Court that a sum of Rs.25 lakhs will be deposited with the petitioners and a schedule of payment for clearing the dues would be placed on record. This submission was accepted as an undertaking to this Court. Though amount of Rs.25 lakhs was deposited, however, the schedule of payment for clearing dues was not furnished. On 15th October 2024, the applicants/intervenors sought time to place on record the schedule indicating the way dues were paid. This again was not complied with.

6. By order dated 29th November 2024, the applicants/intervenors were directed (a) to bring to the notice of the parents of the students enrolled at the school being run by applicant No.1 that the academic activities of the school would not be continued from 2025-2026 and (b) to approach the petitioners for repaying the outstanding dues. Even this order dated 29th November 2025 was breached. It is pointed out by learned counsel for the petitioner-creditors that after trespassing the secured asset, the applicants/intervenors were admitting the students for academic year 2025-26, in breach of the order of this Court.

7. On 18th December 2024, the applicants/intervenors filed an undertaking to this Court to deposit amount of Rs.1,20,00,000/- with petitioners in two equal installments, to show their *bona fides*. The statement was made before the this Court on instructions of Mr. Dashtrath G. Kale, Chairman of applicant No.1, who was present in the Court on behalf of the applicants/intervenors. However, this undertaking was also breached.

8. This Court vide order dated 13th February 2025, considering the fact that a school was operating at the secured asset and the annual examinations were scheduled to conclude on 15th April 2025, the date for taking possession of the secured asset was fixed as 21st April 2025, which was subsequently rescheduled to 2nd May 2025 by an order dated 17 April 2025. The applicants/intervenors challenged the order dated 17th April 2025 before the Hon'ble Supreme Court. The SLP was dismissed.

9. On 2nd May 2025, respondent Nos.1 and 2 handed over the possession of the secured asset to the authorised officer of the petitioners. A group of around 40 individuals trespassed the secured asset on 3rd May 2025. The possession of the secured asset was once again handed over to the authorised officer of the petitioners pursuant to the order dated 15th May 2025 passed by this Court. Again a group of around 40 individuals trespassed the secured asset. By order dated 19th June 2025, only by way of indulgence at the request of learned counsel for the applicants/intervenors this Court granted time till 24th June 2025, to rectify the situation and

restore the possession of the secured asset to the petitioners.

10. Today, Mr. Vaidya, learned counsel for the intervenors/applicants once again made a request that some time may be granted to them to deposit Rs.50 lakhs. We have already observed that the conduct of the applicants/borrowers has been far from satisfactory and by sheer use of strong arm tactics showing utter disregard to the rule of law. In such view of the matter, we direct the Senior Inspector of Police, Kurndwad Police Station, Kolhapur to depute necessary police force to assist respondent Nos.1 and 2 to take possession of the school on or before 3rd July 2025.

11. Considering the manner in which the property is trespassed, we direct the In-charge of police station to depute two police constables at the site of the secured assets for which the charges will be paid by the petitioners for a period of two weeks from the date when the repossession is taken and handed over to the petitioners. It is open for the petitioners to post their security guards at the secured asset once the possession is taken. If any further attempt is made

by the applicant or agent claiming through them to trespass the secured asset will be viewed seriously by this Court.

12. We hereby restrain the applicants/intervenors, their agents, or any persons acting on their behalf from entering the secured asset after it has been repossessed pursuant to this order.

13. The petition is disposed of in the aforesaid terms. The Interim application is rejected. Liberty to the applicants/intervenors to file appropriate proceedings for restoration of the possession, if not already filed, is kept open.

14. List the petition on 28th July 2025 under the caption “for compliance”.

(N.R. BORKAR, J.)

(M.S. KARNIK, J.)