

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

WRIT PETITION NO.853 OF 2025

Sahani Chhaya Manoj	.. Petitioner
Vs.	
Deutsche Bank, Mumbai and Anr.	.. Respondents

Mr. Pankaj Vijayan with Ms. Sejal Kanase, Advocates, i/by Intralegal, for the Petitioner.

Mr. R.L. Motwani, Advocate for the Respondents.

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

DATE : 20TH JANUARY 2025.

PC. :

1. Heard learned counsel for the parties.
2. The challenge raised in this writ petition is to the order dated 9th January 2025 passed in Interim Application No.37 of 2025 arising out of Securitization Application No.17 of 2025. By the said order, interim application moved by the petitioner seeking to restrain the respondent no.1-Bank from taking physical possession of the secured asset on 10th January 2025 came to be rejected.
3. According to the petitioner, on the basis of a Leave and License Agreement executed by the borrower in her favour for the period from 18th May 2024 to 17th May 2027, the petitioner and her family were occupying the premises. Without any due notice being given to her, steps for taking

possession were initiated by issuing a notice dated 23rd November 2024 and thereafter 18th December 2024.

4. The learned Presiding Officer while considering the interim application noted that the Loan Account of the borrower was declared as Non-Performing Asset and a Demand Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*“Act of 2002”*) was issued on 25th March 2021. Since the Leave and License Agreement was executed after this notice was issued, the petitioner had no legal right to seek protection of her possession.

5. We have heard the learned counsel for the parties and we have perused the documents on record. Undisputedly, the notice under Section 13(2) of the Act of 2002 came to be issued on 25th March 2021. In the light of the provisions of Section 13(13) of the Act of 2002, it was not permissible for the borrower – licensor to execute the Leave and License Agreement in favour of the petitioner. Once this position is clear, it is obvious that the petitioner has no locus to seek continuation of possession. It is urged by the learned counsel for the petitioner by referring to the decision of the Supreme Court in *Dr. Rash Lal Yadav Vs. State of Bihar, 1994 AIR (SCW) 3329* that in breach of the principles of natural justice, a notice of dispossession could not have been issued to the petitioner. In this

regard, the learned counsel for the respondent-Bank submits that such notice was given initially on 23rd November 2024 by pasting the same on the premises and thereafter also on 18th December 2024.

We therefore do not find that without due notice, steps for dispossession were taken by the Bank. Considering the aforesaid, we do not find that there is any case made out to interfere with the order passed by the Debts Recovery Tribunal.

6. The learned counsel for the petitioner however submits that the said property being a residential house, the belongings of the petitioner and family members including her minor daughter are lying there. The learned counsel for the petitioner further submits that with a view to make alternate arrangements, the petitioner and her family members be put back in the said premises for a period of four weeks to enable them to make alternate arrangements. The learned counsel for the Bank however submits that the subject property is proposed to be auctioned and hence it would not be desirable to put back the petitioner in possession.

We find that the petitioner and her family members were residing in the said premises since May 2024. Only with a view to enable them to make alternate arrangements and also remove their belongings, it is directed without recognising or creating any right in them, the petitioner and her family members shall be put back in possession for a period of

three weeks from today, subject to the following conditions :-

- (a) The petitioner shall furnish an undertaking of herself and all adult members of the family that they would not claim any rights whatsoever on the strength of the Leave and License Agreement that was executed for the period from 18th May 2024 to 17th May 2027. The petitioner and her family members would handover vacant and peaceful possession of the subject property to the respondent no.1-Bank on 11th February 2025 by 11:30 am.
- (b) It shall be open for the petitioner and her family members to remove all belongings from the subject property and make alternate arrangements for their accommodation.
- (c) The respondent no.1-Bank is free to issue a notice of auction proposing to auction the said property any time after 11th February 2025.
- (d) It is clarified that these directions are issued in the peculiar facts of the case and only with a view to enable the petitioner and her family to remove their belongings and make alternate arrangements for their accommodation.

- (e) The petitioner and all adult family members shall file the aforesaid undertaking, as directed, by 22nd January 2025 with copies of the same being served on the counsel for the Bank.
- (f) On receiving such undertakings, the petitioner and her family shall be put back in possession.
8. The writ petition stands disposed of in aforesaid terms.
9. List on 13th February 2025 for reporting compliance.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]