

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2725 OF 2025

Kotak Mahindra Bank Limited	...Petitioner
<i>Versus</i>	
The State of Maharashtra & Anr.	...Respondents

Mr. Prafull Chipte a/w Ms. Medha Rane, Tejaswi Nanche, i/by Ms. Medha Rane, Advocate for Petitioner.
Ms. G.S. Rao, APP for State

CORAM: MADHAV J. JAMDAR, J.
DATED : 16th June 2025

P.C.:

1. Heard Mr. Prafull Chipte, learned Counsel for the Petitioner and Ms. G.S. Rao, learned APP for the State.
2. The Petitioner is seeking very limited relief that the learned JMFC, Thane be directed to dispose of the Application bearing Exhibits 128 and 129 filed in RCC No.923 of 2010 pending before the learned JMFC, Thane, expeditiously.
3. The Petitioner is Kotak Mahindra Bank Limited. The Respondent No.1 is State of Maharashtra and Respondent No.2 is the Senior Inspector of Police.
4. Mr. Chipte, learned Counsel appearing for the Petitioner points out following factual aspects:-

(i) The Petitioner initiated measures under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”). After initiation of measures, the Original Complainant Mr. Raghunath Kadam (claiming to be landowner of the building) filed Criminal Case against the Principal Borrowers / Accused persons in R.C.C. Case No. 923 of 2010 and on the basis of the said Complaint, the Respondent No.2 has registered F.I.R. bearing No.49 of 2009 for the offences punishable u/sec. 420 and 467 of Indian Penal Code.

(ii) After registration of the FIR, the Respondent No. 2 has called upon the officials of the Petitioner and recorded their statement and sealed the Original title deeds of the mortgaged properties by making seizure memo on 19.11.2010.

(iii) Thereafter as there is was no stay, the Petitioner proceeded further under the provisions of SARFAESI Act and Rules framed thereunder for the purpose of taking possession of the secured assets / mortgaged properties and the same was challenged by the Original Complainant Mr. Raghunath Kadam (claiming to be landowner of the building) by filing Securitisation Application No. 93 of 2015 u/sec. 17 of the SARFAESI Act and challenged the measures initiated by the Petitioner.

(iv) The said S.A. No. 93 of 2015 was hotly contested by the Petitioner by filing detailed reply and by producing documentary evidence and after hearing to the parties, the Hon'ble DRT III, Navi Mumbai dismissed the said S.A No. 93 of 2015, on 31st May 2024.

(v) The Petitioner has also filed Original Application bearing No. 335 of 2011 for recovery of outstanding dues against Principal Borrowers / Accused persons in R.C.C. Case No. 923 of 2010 and the same is pending for final adjudication.

(vi) In the said proceedings and as per DRT Rules, the Petitioner has to file CAOD (Claim Affidavit of Original documents) and in order to comply with the DRT Rules and in order to file Original documents pertaining to mortgaged properties, the Petitioner has filed Application for production of original documents pertaining to mortgaged properties and on the basis of the said Application, the Hon'ble DRT, Mumbai has issued Notice upon the Respondent No. 2 calling upon them to produce the original documents.

(vii) The Respondent No. 2 informed to the DRT, Mumbai that, all the original documents pertaining to the mortgaged properties were submitted with the 4th Joint Civil Judge (Junior Division), JMFC Thane along with the charge-sheet and the said Court has declined to release the original documents being part of the trial.

(viii) The officials of the Petitioner observed that, there was creation of third party interest in respect of Flat No.107 (earlier known as Flat No. 6) and that too surprisingly without consent of the Petitioner being mortgagee and on further inquiry, the officials of the Petitioner has come to know that, the said third party rights were created by using the original documents which were deposited and submitted with the Criminal Court.

(ix) The Petitioner has immediately filed Two Applications being 1) Application for production of original documents (Being Exhibit 129) and 2) Application for withdrawal of Original documents (Being Exhibit No. 128) on 25.06.2024 and the said Applications were adjourned to 10.07.2024 for filing Say by the Government Pleader.

(x) The said Applications were never taken up for hearing till today and the same were adjourned from time to time and now next date of hearing.

(xi) The Petitioner brought to the judicial notice of the Trial Court about the subsequent facts after filing of the Charge sheet and the urgency for withdrawal of the Original documents filed before the Learned Trial Court and despite of this urgency, the

Learned Trial Court refused to hear the Applications filed by the Petitioner hence, this Petition.

5. In view of the above factual aspects, the learned JMFC, Thane is requested to dispose of said Application bearing Exhibits 128 and 129 filed in RCC No.923 of 2010 expeditiously within a period of four months.

6. It is clarified that this Court has not considered the merits of said application and all contentions on merits are expressly kept open.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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