



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 1039 OF 2024

(Shri Vishwas Uttam Jamdhade vs. The Chikhali Urban Co-operative Bank Ltd.)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

**CORAM : ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.
SEPTEMBER 25, 2025**

1) On 27/12/2024 following order was passed :-

Heard.

By this petition, the petitioner seeks to quash and set aside the order dated 05/10/2024 passed by learned CJM, Washim, in Criminal M.A. No. 199/2024 and the issuance of communication/ notice dated 05.12.2024 pursuant to the said order by the Court Commissioner regarding the attachment of the petitioner's house property for nonpayment of the loan dues.

2. *Mr. Kadu, the learned Counsel for the petitioner, contended that the petitioner had paid an amount of Rs. 16,00,000/—against the loan amount of Rs. 9,00,000/—to the respondent Bank till this date. Despite this, the Bank has issued the impugned communication to attach the mortgaged property towards the recovery of dues of Rs. 9,62,367/-.*

3. *Perusal of the record, prima facie, it appears that the learned Chief Judicial Magistrate, Washim, has passed an order thereby appointing advocate Mr. Gite as a Court Commissioner to take possession of the secured assets as described in paragraph No. 1 of the said order. Pursuant to the said order, the Court Commissioner, Mr. Gite, on 05.12.2024, issued notice/communication to the petitioner and three others informing them that on 27.12.2024, he would take possession of the mortgaged property. The petitioner has not stated when the notice was served on him. The averments about the same are vague.*

4. Moreover, Hon'ble Apex Court in the case of *CELIR LLP Vs. Bafna Motors (Mumbai) Private Limited and Others (2024)2 SCC 1*) has held that "the High Court should not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act." Despite the mandate, the petitioner moved this petition, contending that he was not aware of the passing of the order dated 05.10.2024 and that no notice was served on him till 26.12.2027 itself. Therefore, he has prayed for a grant of stay to the communication dated 05.12.2024.

5. In support of his submission, he has relied upon the order passed by this Court in Writ Petition No. 433/2024 dated 20.06.2024 and submitted that in view of the observations made in the said order, the petitioner is ready to deposit 50% of the loan dues as shown in the notice in the Court by 31.12.2024. He further canvassed that if the Commissioner has executed the notice, then the petitioner would suffer irreparable loss, so it is submitted that without giving an opportunity to the petitioner, the impugned order is passed and thereby violates the fundamental rights of the petitioner. Hence, he urged for granting an ad-interim stay.

6. Having considered the facts of the case and the submissions, in my opinion, although an alternate remedy is available to the petitioner to challenge the said order as well as communication dated 05.12.2024, however, in the interest of justice, it would be proper to give one more opportunity to the petitioner, subject to he is depositing amount of Rs.5,00,000/- in the Court by 31.12.2024, which would not cause prejudice to the other side. In the interest of justice, I proceed to pass the following order.

i) The impugned order dated 05.10.2024, passed by learned Chief Judicial Magistrate, Washim, in Criminal M.A. No. 199/2024 and issuance of the communication dated 05.12.2024 pursuant to the said order is hereby stayed subject to petitioners depositing Rs. 5,00,000/- in the Court by 31.12.2024 if possession has not been taken till 2.50 p.m. today, on failure of this, the order shall stand vacated without reference to the Court.

ii) Issue notice to the respondents, returnable on 31.12.2024.

iii) Prayer for issuance of Steno copy is granted.

2) Thus, this Court noted that the petitioner has efficacious remedy under the provisions of SARFAESI Act, however, since the petitioner has also challenged the communication dated 05/12/2024, which is in fact a consequence of the order dated 05/08/2024 passed by learned Chief Judicial Magistrate, Washim under Section 14 of the SARFAESI Act. In view thereof and the judgment of Hon'ble Supreme Court in the case of ***CELIR LLP Vs. Bafna Motors (Mumbai) Private Limited and Others (2024)2 SCC 1***, we permit the petitioner to avail appropriate remedy within a period of two weeks from today.

3) With the aforesaid liberty, the petition stands disposed of.

4) The amount deposited by the petitioner before the Court shall be remitted to the Debt Recovery Tribunal, Nagpur. Interim orders shall continue to operate for a period of two weeks from today and shall stand discontinued on completion of two weeks.

(JUDGE)

(JUDGE)