Andreza

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

APPELLATE SIDE CIVIL JURISDICTION

MISC. CIVIL APPLICATION NO. 968 OF 2024
IN
WRIT PETITION NO. 5617 OF 2024

Union Bank of India,Nagpur Thr. Bank Authorized Officer, Mr. Rohit Pradeep Gulkari ... Petitioner

V e r s u s

State of Maha., Thr. Its Secretary Ministry of Finance and Revenue, Mumbai & Ors. ... Respondents

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Mr. M. G. Bhangde, Senior Advocate *assisted by Mr. S. D. Ingole for Petitioner.*

Mr. N. S. Rao, AGP *for the Respondent-State.*

CORAM: BHARTI DANGRE &
ABHAY J. MANTRI, JJ.

DATE : 29th APRIL 2025

P.C.

1. The Review Petition is filed seeking recall of the Order dated 25.09.2024, by recording the background fact, that the Petitioner-Bank had registered its security interest under the provisions of the SARFAESI Act, 2002 and also initiated proceedings resulting into Order under Section 14 of the Act passed by the CJM, Chandrapur.

The Bank had also taken possession of the subject property and put it on e-auction sale. The Respondent No. 4 had filed an appeal under Section 17 of the SARFAESI Act before DRT and even the Bank filed proceedings under Section 19(1) being numbered as OA No. 103/2020, both of which are pending for adjudication.

2. We expressed our disinclination to entertain the Petition in the wake of the aforesaid facts and, therefore, the Counsel for the Petitioner sought withdrawal of the Petition and, as such, on 25.09.2024, the Petition was disposed off as withdrawn.

3. The learned Senior Counsel Mr. Bhangde appearing for the Review Petitioner, has invited our attention to the observations of the Apex Court in the case of **Central Bank of India & anr. vs. Smt. Prabha Jain & Ors.**[1], which has analyzed the scheme of the SARFAESI Act and in specific Section 17, which provides a remedy of Appeal to any person aggrieved by any measures referred to in sub-section (4) of Section 13 taken by its secured Creditors or its authorized Officer. The aforesaid provisions received interpretation being juxtaposed against Section 34, creating a bar of jurisdiction of the Civil Court, in respect of any matter, which DRT or Appellate Tribunal is empowered by or under the Act to determine.

1 2025 SCC OnLine SC 121

4. On an exhaustive analysis of the provisions of the Securitisation Act, 2002, as well as the Recovery of Debts and Bankruptcy Act, 1993, and in specific by referring to the decision in case of **Bank of Rajasthan Limited vs. VCK Shares and Stock Broking Services Limited[2],** answering a reference as to whether a jurisdiction of Civil Court is ousted as regards the independent suit against the Bank in the context of the provisions of the RDB Act, 1993, and whether the suit can be transferred to DRT with or without consent, it was held that the Civil Court's jurisdiction to entertain the suit is not ousted and the barring of jurisdiction of the Civil Court is to be strictly interpreted and need not be readily inferred.

Mr. Bhangde has also pressed into service the decision of the Apex Court in the case of **Arun Bhatiya vs. HDFC Bank & Ors.[3]** as well as the decision of the Bombay High Court in case of **Union Bank of India vs. State of Maharashtra, through its Secretary & Ors.[4]**.

5. In the wake of the aforesaid authoritative pronouncement, we must take note of the background facts, as the Bank has already instituted proceedings under Section 19(1) of the DRT Act and similarly the borrower and the Respondent no. 1 had also instituted an Appeal

2 (2023) 1 SCC 1

3 (2022) 17 SCC 229

4 2021 SCC OnLine Bom 6070

under Section 17 of the Act in which the Sales Tax Department has filed an application for intervention, claiming charge over the property which is attached by the Petitioner-Bank submitting that a huge sum of ₹25,92,00,000/- is due and outstanding as on 31.03.2024.

However, the question therefore that arises for consideration, is whether dues of the Sales Tax Department of the State Government will have precedence over the Secured assets in the hands of the Union Bank of India, the Petitioner which has resorted to the procedure under the SARFAESI Act and this question definitely deserve consideration by this Court, as there is no effective remedy available to the Bank to raise this challenge.

6. In the wake of aforesaid, by taking note of the error that has occurred in passing the impugned Order, we deem it appropriate to recall the Order and restore the Petition to its file, to be heard by the Court on merits.

7. Misc. Civil Application No. 968 of 2024 is made absolute in terms of its prayer Clause.

ABHAY J. MANTRI, J. **BHARATI DANGRE,J**

ANDREZA RODRIGUES EPEREIRA
Digitally signed by ANDREZA RODRIGUES EPEREIRA
Date: 2025.04.29 19:51:20 +05'30'

Signed by: MR. P.M. ADGOKAR
Designation: PS To Honourable Judge
Date: 03/05/2025 12:20:39