IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3455 OF 2026

Hanuman Budhaji Koli	..	Petitioner
V/s.		
The State Of Maharashtra and Anr.	..	Respondents

Mr. Vaibhav Ugle with Vikas S., Shubham Dasvant with Prashant Mahajan and Aditya Shinde, for the Petitioner.

Ms. M.S. Bane, AGP, for all Respondent No. 1.

Mr. R.L. Motwani, for Respondent No. 2.

CORAM : MANISH PITALE & SHREERAM V. SHIRSAT, JJ.

DATE : 17th MARCH 2026.

PC:

1. Heard learned counsel for the Petitioner.

2. By this petition, the Petitioner has directly challenged the order passed by the competent Magistrate on 16/02/2026 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. It is the case of the Petitioner that the order of the competent Magistrate suffers from lacunae, as there is no notice under Section 13(2) of the Securitisation Act issued by the secured creditor-Respondent No. 2.

4. In the first place, the Petitioner ought to take recourse to the

statutory alternative efficacious remedy provided by the statutory scheme under the Securitisation Act. Secondly, as per the settled law, the competent Magistrate performed only a ministerial Act, and he is not supposed to consider any objections or disputes raised by the interested parties. Thirdly, the competent Magistrate in the order dated 16/02/2026 has specifically taken note of the documents placed by the secured creditor on record in Paragraph Nos. 4 and 5, which show compliance with the requirements of law. The said paragraphs refer to the notice under Section 13(2) of the Securitisation Act and the fact that such notices were sent by speed post to all concerned, apart from the fact that the notices were also published in the newspaper.

5. It is noted that the Court Commissioner, in pursuance of the said order of the competent Magistrate issued notice on 28/02/2026, which was duly served upon the Petitioner, about which there is no dispute. The said notice fixed the date of taking possession as 18/03/2026. The Petitioner had ample time to take recourse to the alternative remedy of approaching the Debt Recovery Tribunal (DRT) under the provisions of Securitisation Act.

6. Petitioner did not choose to do so and now this Writ Petition is circulated only a day prior to the date fixed for taking over physical possession.

7. In such a situation, it is submitted that even if this Petitioner has to approach before the DRT, this Court may in the meanwhile grant protection.

8. We are not inclined to entertain the present Writ Petition in terms of law laid down by the Supreme Court and reiterated in a number of judgments. In the case of '**United Bank of India Vs. Satyawati Tondon and others**[1], the Supreme Court has observed in this context as follows:

> *"42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression `any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.*
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> *43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

1 2010 (8) SCC 110

> *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*
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> *45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance".*

9. It appears that despite the aforesaid specific position of law recognised by the Supreme Court on certain occasions the High Court has been showing indulgence and therefore, in the case of **'Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors'.**[2], the Supreme Court was constrained to make the following observations:

> *"101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon (supra), it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act".*

2 (2024) 2 SCC 1

10. In view of the above, we are clear that the present Writ Petition cannot be entertained. Accordingly, the Writ Petition is dismissed.

11. However, dismissal of this Writ Petition will not come in the way of the Petitioner taking recourse to the statutory remedy available under the Securitisation Act.

12. Pending applications, if any, also stand disposed of.

13. We have not expressed any opinion on the merits of the matter.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**