IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4258 OF 2026

Santosh Bhausaheb Patil	..	Petitioner
V/s.		
The Bank of Maharashtra Throu. Sunil Narayandas Sahu and Ors	..	Respondents

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Mr. Amit Sale, a/w Mr. Tukaram Shendge, for the Petitioner.

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

DATE : 6TH APRIL 2026.

PC:

1. Heard learned counsel for the petitioner. The present writ petition is filed and circulated for urgent ad-interim relief in the light of physical possession of a secured asset sought to be taken tomorrow, i.e. on 07/04/2026 at 11 am by the Respondent No. 1 Bank (secured creditor).

2. The petitioner is the mortgagor of the subject property (secured asset) for a loan facility availed by Respondent No. 2 (borrower). The Respondent No. 3, who is the wife of the petitioner, is the proprietor of the Respondent No. 2 (borrower).

3. The petitioner claims that despite being the mortgagor of the subject property and the husband of the proprietor of the Respondent No. 2 (borrower), he was completely unaware of proceedings undertaken by the

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Respondent No. 1 Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act). It is claimed that when notice of taking physical possession was received, the petitioner was constrained to obtain certified copies and he is before this Court seeking urgent ad-interim relief.

4. The Respondent No. 1 Bank has not been served in advance. As a consequence, there is no representation on behalf of the said respondent. On the face of it, we find this to be another case of the mortgagor being a fence sitter throughout the lawful proceedings undertaken by the Respondent No. 1 Bank under the provisions of the SARFAESI Act. Prima facie, the petitioner is feigning ignorance of the steps taken by the Respondent No. 1 Bank despite the fact that he is the mortgagor of the subject property and also the husband of the proprietor of Respondent No. 2, i.e. the original borrower. The filing of the writ petition and having it circulated, one day prior to physical possession of the secured asset being taken is another example of creating a situation of urgency before the Writ Court to somehow obtain an ad-interim order and to enjoy the same to the detriment of the Respondent No. 1 (secured creditor).

5. It is an admitted position that the petitioner has recourse to an alternative efficacious remedy of approaching the Debt Recovery Tribunal (DRT) under the provisions of the SARFAESI Act. The Supreme Court in a

series of judgments including in the case of ***Bank of India v/s Satyavati Tandon*** [(2010) 8 SCC 110] and a recent judgment in the case of ***Celir LLP v/s Bafna Motors (Mumbai) Pvt. Ltd. And Ors*** [(2024) 2 SCC 1] has repeatedly held that the High Court in writ jurisdiction ought not to entertain writ petitions when such statutory alternative efficacious remedy of approaching the DRT is available to the aggrieved person. In the present case, the usual ground of violation of principles of natural justice is taken only with the view to maintain the present writ petition. In such a situation, we were inclined to dismiss the writ petition today itself. But, the learned counsel for the petitioner invited attention of this Court to a ground taken in the writ petition stating that the daughter of the petitioner has appeared for the 12th Board Examination from Science stream and that she is in the process of appearing for entrance examinations for admission to professional courses. It is indicated that the Entrance Examinations would continue till May 2026. On this basis, it is submitted that if physical possession of the subject property is taken, it may disturb the studies of the daughter of the petitioner.

6. Despite the aforesaid specific grounds taken in the writ petition, we are of the opinion that even if limited ad-interim direction is to be issued till the next date, the petitioner must be put to appropriate terms in the light of the observations made hereinabove.

7. In view of the above, issue notice returnable on 21st April 2026, list in supplementary list. Humdast granted in addition.

8. We find that Respondent Nos. 2 and 3 are proforma respondents, yet the petitioner shall ensure service upon the said respondents. As regards, Respondent No. 1 Bank (secured creditor), additionally the petitioner shall serve the said respondent by way of private service and file an affidavit of service on or before 18th April 2026.

9. Subject to the petitioner depositing an amount of Rs. 25 lakh in this Court on or before 18th April 2026, the taking over of physical possession of the subject property shall be deferred till the returnable date, i.e. 21/04/2026. Consequently, the Respondent No. 1 Bank shall not act upon the notice issued for taking physical possession of the subject property tomorrow i.e. 07/04/2026 at 11 am, till the next date.

10. We are making clear that the ad-interim order shall operate only till the next date of listing and it has been granted without prejudice to the rights and contentions of the parties.

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

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