IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5322 OF 2026

Zuber Ahmed Khalil Khan ... Petitioner
vs.
The State of Maharashtra and others ... Respondents

Mr. Mandar Soman a/w. Ms. Dimple Tejani for petitioner.

Ms. P. M. J. Deshpande, AGP for respondent Nos.1 and 2 – State.

Mr. Venkatesh Dhond, Senior Advocate, a/w. Mr. O. A. Das and Ms. Riddhi Bawdane for respondent No.3 – Bank of India.

CORAM : MANISH PITALE & SHREERAM V. SHIRSAT, JJ

DATE : 21st APRIL, 2026

P.C. :

. Heard learned counsel for the parties.

2. By this petition, the petitioner has challenged an order dated 28.11.2025 passed by the Chief Judicial Magistrate, Thane on the basis of which the petitioner is likely to be physically dispossessed. It is the case of the petitioner that the said order was obtained from the Magistrate by the respondent No.3 – Bank of India (secured creditor) on the basis of fraud and suppression.

3. It is contended that respondent No.3 – bank deliberately suppressed an earlier order dated 01.07.2019 issued by the Additional District Magistrate, Thane which was put to execution on a number of occasions. Merely because the respondent No.3 – bank failed to execute the said order of the Magistrate, it was not entitled to again seek invocation of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (Securitisation Act), to obtain the impugned order dated 28.11.2025.

4. The petitioner claims to be in possession of the subject property (secured asset) as a licensee of the guarantor/mortgagor. The documents show that when respondent No.3 – bank made attempts to execute the earlier order dated 01.07.2019 passed by the Additional District Magistrate, Thane, passed under Section 14 of the Securitisation Act, the petitioner relied upon a decree dated 19.10.2022 passed by Civil Judge Junior Division (CJJD), Belapur in a suit filed by the petitioner against his licensor i.e. guarantor/mortgagor. The Circle Officer, who made an attempt to execute the said order dated 01.07.2019 passed by the Magistrate, in that backdrop, sought guidance from the Tahsildar, Thane, by letter dated 25.10.2024. The documents on record also show that when further attempts were made by respondent No.3 – bank by approaching the Tahsildar, the petitioner addressed a communication to the Circle Officer, stating that if the said respondent gets an order from the competent Court against him, he would not raise any objection to handover the possession. The documents on record show that a number of attempts were made by the respondent No.3 – bank for executing the earlier order of the Magistrate.

5. It is in this backdrop that respondent No.3 – bank appears to have approached the Chief Judicial Magistrate, Thane and on 28.11.2025, the said Magistrate passed the impugned order on the basis of which the recent notice dated 31.01.2026 was issued to the petitioner, stating that physical possession of the secured asset shall be taken on 21.04.2026 i.e. today. The respondent No.3 – bank has appeared through counsel, while respondent Nos.1 and 2 – State authorities are represented by the learned AGP.

6. Mr. Soman, learned counsel appearing for the petitioner submitted that since the respondent No.3 – bank willfully suppressed the existence of the earlier order dated 01.07.2019 passed by the Additional District Magistrate, Thane, in the subsequent application filed before the Chief Judicial Magistrate, Thane, the impugned order deserves to be set aside on that ground alone.

7. Reliance was placed on the judgement of this Court in the case of *Satishkumar Surendra Shetty vs. The District Collector, Thane and others* (**judgement and order dated 22.09.2022 passed in Writ Petition No.7657 of 2022**). It was submitted that the position of law laid down in the case of *Phoenix ARC Private Limited vs. The State of Maharashtra and others* (**2022 SCC OnLine Bom 1710**) was recognised that while considering an application under Section 14 of the Securitisation Act, the Magistrate performs a purely ministerial function. Yet, it was held that the applicant under the said provision is mandated to strictly comply with the requirement of placing correct facts before the Magistrate and if there was a slight hint of untruthfulness in the contents of such application, it would vitiate the proceedings before the Magistrate. On this basis, it was submitted that the impugned order dated 28.11.2025 deserves to be set aside and consequently, the notice of dispossession issued against the petitioner also deserves to be set aside.

8. It was vehemently submitted that this Court ought to hold that in the facts and circumstances of the present case, the respondent No.3 – bank did not approach the Chief Judicial Magistrate with clean hands and that therefore, the present petition deserves to be allowed. It was further submitted that sustaining the impugned order would amount to holding that a second application is maintainable before the competent Magistrate under Section 14 of the

Securitisation Act, which is in the teeth of the settled position of law.

9. On the other hand, Mr. Dhond, learned senior counsel appearing for respondent No.3 – bank submitted that the documents on record clearly show the manner in which the petitioner repeatedly obstructed the said respondent from taking physical possession of the secured asset, despite the fact that the said respondent had complied with all the requirements of law. Crucially, the petitioner did not take recourse to the remedy available under the provisions of the Securitisation Act, by approaching the Debts Recovery Tribunal (DRT). It was submitted that although the fact regarding existence of the earlier order dated 01.07.2019 was not stated in the subsequent application filed on behalf of the said respondent before the competent Magistrate, that in itself ought not to be a ground to grant any relief to the petitioner. It would amount to placing premium on the obstructionist attitude of the petitioner, who is squatting in the property, which is the secured asset.

10. It was submitted that the *ex-parte* decree was obtained from the said Civil Court at Belapur by the petitioner in a collusive manner, as the licensor (guarantor/mortgagor) had failed to appear before the said Court. Attention of this Court was specifically invited to the letter at page No.64 of the petition, wherein the petitioner had stated to the Circle Officer that if respondent No.3 – bank obtains an order from a competent Court, the petitioner would not resist taking over of the physical possession. It was submitted that in the backdrop of the aforesaid chronology of events, the said respondent was constrained to approach the Magistrate and obtain the order dated 28.11.2025, leading to the consequential notice for taking physical possession, issued to the petitioner.

11. While considering the rival submissions, this Court is particularly conscious of the fact that writ jurisdiction has been invoked. While exercising writ jurisdiction, this Court would lean towards a view that would further the cause of justice and an approach calling upon the Court to decide hair-splitting arguments for decision on some question of law would be eschewed.

12. On an overall appreciation of the facts of the present case, it comes to the fore that the petitioner, who is in possession of the secured asset, was aware about the steps repeatedly being taken by respondent No.3 – bank for taking possession of the secured asset in accordance with the provisions of the Securitisation Act. The said statute provides a specific remedy for any person aggrieved by the steps taken by a secured creditor like the respondent No.3 – bank, which was seeking to execute the order passed by the competent Magistrate as far back as in the year 2019. Till date, the petitioner has failed to take any steps to take recourse to the statutory remedy of approaching the DRT for redressal of his grievance.

13. The documents on record also show that the petitioner repeatedly resisted the attempts for execution of the order of the Magistrate, by relying upon the *ex-parte* decree passed by the Court of CJJD, Belapur on 19.10.2022. It is crucial to note that the only defendant in the said suit i.e. the licensor (guarantor/mortgagor) failed to appear before the aforesaid Court, leading to the *ex-parte* decree.

14. The said decree dated 19.10.2022 was repeatedly relied upon by the petitioner in his communications to the Circle Officer and this is evident from the said Officer seeking guidance from the Tahsildar in his letter dated 24.10.2024. It is also relevant to note that the

petitioner sent a letter to the said Officer, stating that if the respondent No.3 – bank obtained an order from a competent Court, he would abide by such an order. The documents on record also show that the Tahsildar issued a number of notices in the context of the order dated 01.09.2017, passed by the Magistrate.

15. We do find that in the subsequent application filed on behalf of respondent No.3 – bank under Section 14 of the Securitisation Act, leading to the impugned order dated 28.11.2025, there does not appear to be any reference to the earlier order passed by the Magistrate. It would have been appropriate for the said respondent to have mentioned the aforesaid fact. But, the petitioner cannot take advantage of the said situation to contend that the steps lawfully taken by respondent No.3 in respect of the secured asset, can be stalled merely because of the said fact.

16. We find that no attempt was made at any point in time by the petitioner to deal with the situation on the merits of the matter. The petitioner has not raised any ground with regard to the validity of the documents on the basis of which the respondent No.3 – bank, which is a secured creditor, proceeded under the provisions of the Securitisation Act.

17. Viewed from this angle, reliance placed on behalf of the petitioner on the observations made by this Court in its judgement in the case of **Satishkumar Surendra Shetty vs. The District Collector, Thane and others** (*supra*), appears to be misplaced. The purport of the said observation is that although the Magistrate may be performing a ministerial function, while considering an application under Section 14 of the Securitisation Act, it would be necessary for the secured creditor to place on record the documents relied upon in

the said proceeding in a truthful manner, thereby indicating that the secured creditor would be duty-bound to place true facts on record. The said observations cannot be relied upon the petitioner in this petition to contend that respondent No.3 – bank can be prevented from proceeding to take physical possession of the secured asset.

18. This Court has observed that borrowers/guarantors/ mortgagors leave no stone unturned to frustrate the proceedings lawfully initiated under the provisions of the Securitisation Act by the secured creditors, like respondent No.3 – bank herein. On many occasions, third parties are propped up to somehow frustrate the secured creditor from proceeding under the provisions of the Securitisation Act, indicating a challenge to the very rule of law.

19. In such a situation, this Court is not inclined to grant any relief to the petitioner in the present petition. There is not an iota of material placed before this Court, to indicate that there is any deficiency or defect in the manner in which respondent No.3 – bank has proceeded to take logical steps as per the Securitisation Act. We cannot allow respondent No.3 – bank, which is a secured creditor, from being further frustrated in its attempts to take such steps under the Securitisation Act to reach their logical conclusion. Writ jurisdiction cannot be exercised against the lawful steps being taken by the secured creditor and for the aid of an individual, who is seeking to resist such steps, particularly when such individual has refused to take recourse to the remedy available in law.

20. In view of the above, the writ petition is dismissed.

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