



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18656 OF 2024

DOMBIVALI NAGARI SAHAKARI
BANK LTD. THR. ITS AUTHORISED
OFFICER SHASHIKANT SAKHARAM GAWADE ..PETITIONER

VS.

THE STATE OF MAHARASHTRA & ORS. ..RESPONDENTS

Mr. Sanjay Anabhawane a/w. Ms. Tejaswi Nanche, Ms. Komal Bhosale
i/b. Ms. Medha Rane for the petitioner.

Mr. Shahaji Shinde, 'B' Panel Counsel a/w. Mr. S. L. Babar, AGP for
respondent – State.

CORAM : A. S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 16th DECEMBER 2024.

JUDGMENT:- (PER RAJESH S. PATIL):

1. Rule. Rule made returnable forthwith and by consent of the parties heard finally.

2. This petition is filed under Article 226 of the Constitution of India by the petitioner a Multi-State Scheduled Co-operative Bank *inter alia* praying for enforcement of guidelines given by the State Government vide Circular dated 10th April 2023, and to follow Guidelines particularly appointing an Advocate as Commissioner to execute the order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities

Interest Act, 2002 (for short 'SARFAESI Act') as per the directions given by the Division Bench of this Court in Writ Petition No. 15285 of 2022 (L&T Finance Limited versus State of Maharashtra), vide order dated 17th April 2023, and for issuance of Writ of Mandamus thereby directing the respondent no.3 forthwith and/or with such time as this Court may deem fit and proper to execute and implement the order dated 28th February 2023 passed by the learned Chief Judicial Magistrate, Pune, under Section 14 of the SARFAESI Act in an application being Application No. 220 of 2023 on the grounds mentioned therein and in line with the direction given by this court on 17th April 2023.

3. It is the case of the petitioner that the petitioner is a Multi-State Scheduled Co-operative Bank and is a secured creditor for the purpose of the SARFAESI Act. It is further case of the petitioner that on a request made by M/s. Vishwarekha Flowers, through its proprietor Mr. Vishwas Sandipan Jogdand, from time to time sanctioned various credit facilities amounting to Rs.641.67 lakhs to them. In consideration of the said credit facilities granted to the borrowers, the principal borrowers have executed various loan security documents. In consideration of the credit facilities granted, the borrowers created security interest over the properties being a

piece and parcel of land bearing Plot No.39, in Talegaon Floriculture Park, within the limits of Maharashtra Industrial Development Corporation, within the village of Akrudi out of the limits of Talegaon Municipal Council, Taluka Maval, District Pune, admeasuring about 33620 sq. mtrs. (hereinafter referred to as “secured asset”). By way of equitable mortgage of the deposit of the title deeds, the borrowers deposited all the original title deeds of the secured assets with the petitioner. Since there were defaults committed by the borrowers in discharging their obligations towards repayment of the said credit facilities, the account of the borrowers was classified by the petitioner as *Non Performing Asset (NPA)* , on 31st March 2022. The petitioner thereafter issued demand notice dated 5th September 2022 under Section 13(2) of the SARFAESI Act, thereby calling upon the borrowers to repay an outstanding amount of Rs.7,06,07,991.39 as on 17th August 2022 with further interest until payment/realization within 60 days from the date of the said notice. The said notice was duly served on the borrowers. So also, the demand notice was published in daily newspaper. Despite the notice, the borrowers neither discharged their liability within stipulated period as mentioned in the said notice nor raised any objection/representation under Section 13 (3-A) of the SARFAESI Act. Hence, the petitioner

proceeded further under the provisions of Section 14 of the SARFAESI and filed Criminal M. A. bearing No.220 of 2023 before the learned Chief Judicial Magistrate, Pune. The petitioner thereafter, complied with all necessary directions and after being satisfied the learned Chief Judicial Magistrate, Pune, has passed an order dated 28th February 2023 and appointed the respondent no.3 to take possession of the secured asset and deliver the same to the authorised officer of the petitioner.

4. The petitioner accordingly paid the fees of the Court Commissioner and in pursuance thereof, the learned Chief Judicial Magistrate, Pune issued Writ of Commission bearing No.11489 of 2023 dated 21st August 2023 in favour of the Court Commissioner and commanded to take and deliver the possession of the secured asset to the authorised officer within 90 days from the date of Writ of Commission i.e. from 21st August 2023.

5. The Court Commissioner accordingly fixed the date for taking possession of the secured asset, however, before that date, the borrowers approached the petitioner and submitted settlement proposal which was considered by the petitioner and instructed to the Commissioner to postpone the activity of taking possession of the

secured asset. The petitioner believed the assurances of the borrowers. However the borrowers defaulted in making the payment under the settlement proposal, hence, the petitioner had no option but to approach the respondent no.3 for fixing the fresh date for taking the possession of the secured asset. However, the respondent no.3 informed the petitioner that since the time of the Writ of Commission has expired, he has to extend the said Writ of Commission from the learned Chief Judicial Magistrate, Pune. The officers of the petitioner, then, followed up with the respondent no.3 for execution of the order passed under Section 14 of the SARFAESI Act. The respondent no.3 thereafter informed that the learned Chief Judicial Magistrate, Pune, is not extending the Writ of Commission on the ground that the validity of the order is only for 90 days and the bank has to obtain fresh order by re-filing Section 14 Application. The petitioner thereafter approached the learned Chief Judicial Magistrate, Pune on several of occasions and brought to its notice that there is no validity period for Section 14 order and it is an administrative assistance which can be granted to the petitioner without insisting for re-filing. However, the learned Chief Judicial Magistrate, Pune, refused to extend the Writ of Commission, resulting the petitioner not being able to execute the order dated 28th February

2023. Hence, the present Writ Petition is filed seeking a directions to the learned Chief Judicial Magistrate, Pune to execute the order passed under Section 14.

6. Mr. Sanjay Anabhawane, the learned counsel appearing for the petitioner- Bank submitted that the learned Chief Judicial Magistrate, Pune, failed to consider the order passed by the Division Bench of this Court in *Writ Petition No.15285 of 2022 (L&T Finance Limited versus State of Maharashtra) with companion Writ Petitions*, on 17th April 2023. He submitted that though the copy of order passed by the Division Court of this Court in L&T Finance Limited was shown to the learned Chief Judicial Magistrate, Pune, however, the learned Chief Judicial Magistrate was not ready to act. Mr. Anabhawane also referred to the order of the Supreme Court in *NKGSB Co-operative Bank Limited Versus Subir Chakravarty (SLP (Civil) No.30240 of 2019)* wherein the issue with regard to the appointment of advocate and authorise him/her to take possession of the secured asset within the meaning of Section 14(1A) of the SARFAESI Act was considered and it was held in the said judgment that the CMM/DM had power to appoint an advocate Court Commissioner for executing the orders passed under Section 14 of the SARFAESI Act. He submitted that the act of the learned Chief Judicial Magistrate, Pune, in not executing

the order dated 28th February 2023 in time bound and expeditious manner is nothing but dereliction of their duties and contrary to aim and object of Section 14 of the SARFAESI Act. He further submitted that the order passed on an application filed under Section 14 shall authorise the taking of physical possession of the secured asset with force, which includes the breaking open of locks wherever necessary and directing the concerned police authorities to provide assistance in taking possession. He submitted that hence, the present Writ Petition should be allowed.

7. Mr. Shahaji Shinde, the learned Assistant Government Pleader appeared on behalf of the respondent – State and opposed the Writ Petition. He submitted that since 60 days period was over, the learned Chief Judicial Magistrate, Pune, had refused to act pursuant to the order passed on 28th February 2023. He submitted that if a fresh application is preferred by the petitioner, the same could have been heard and disposed of by the learned Chief Judicial Magistrate, Pune, as per the provisions of law.

8. We have heard the learned counsel for the parties and have gone through the documents on record including the authorities furnished by the petitioner.

9. The SARFAESI Act was enacted for the purpose that the banks and financial institution would be able to release long term assets, manage problems of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them, and reduce non performing assets by adopting measures for recovery or reconstruction. Section 14 of the SARFAESI Act directs the Chief Judicial Magistrate or District Magistrate to assist secured creditor in taking possession of the secured asset.

10. The Supreme Court in *NKGSB Co-operative Bank Limited Versus Subir Chakravarty*¹ had occasioned to consider the issue regarding appointment of advocate and authorise him/her to take possession of the secured asset within the meaning of Section 14 (1A) of the SARFAESI Act. After considering numerous provisions and judgments the Supreme Court held that the CMM/DM had power to appoint an advocate Court Commissioner for executing the orders passed under Section 14 of the SARFAESI Act. The paragraph no.29 and 36 thus read as under:-

29. It is common knowledge that, in the respective jurisdictions, there is only one CMM/DM. If he is expected to reach at every location himself for taking possession, in some jurisdictions it would be impracticable, if not possible, for him to do so owing to large number of applications in the given jurisdiction being a commercial city. Accordingly, strict construct would defeat the legislative intent

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and purpose for enacting the 2002 Act. Indeed, logistical problems of the Office of the CMM/DM cannot be the basis to overlook the statutory provision. However, we are persuaded to take the view that, an advocate is and must be regarded as an officer of the Court and subordinate to the CMM/DM for the purposes of Section 14 (1A) of the 2002 Act."

36. The statutory obligation enjoined upon the CMM/DM is to immediately move into action after receipt of a written application under Section 14(1) of the 2002 Act from the secured creditor for that purpose. As soon as such application is received, the CMM/DM is expected to pass an order after verification of compliance of all formalities by the secured creditor referred to in the proviso in Section 14(1) of the 2002 Act and after being satisfied in that regard, to take possession of the secured assets and documents relating thereto and to forward the same to the secured creditor at the earliest opportunity. The latter is a ministerial act. It cannot brook delay. Time is of the essence. This is the spirit of the special enactment. However, it is common knowledge that the CMM/ DM are provided with limited resources. That inevitably makes it difficult, if not impossible, for the CMM/DM to fulfil his/her obligations with utmost dispatch to uphold the spirit of the special legislation."

(emphasis supplied)

11. In the present proceedings, the petitioner - financial institution has come up with a case that the learned Chief Judicial Magistrate, Pune, is not extending the date of commission on the ground that the validity of the order which commanded the Court Commissioner to take and deliver the possession of the secured assets to the authorised officer of the petitioner is only to be done within 90 days, and once this 90 days period is over, the petitioner would have to obtain a fresh order by refiling a Section 14 application. It is also further the case of the petitioner that in all such matters where within 90 days

the order could not be executed, the learned Chief Judicial Magistrate, Pune, is directing parties to file a fresh application under section 14. In our view, once an order has been passed directing the Court Commissioner to take and deliver the possession of the secured asset to the authorised officer of the banks/financial institution within 90 days, and if for some reason the said process of taking possession and handing over within 90 days could not be achieved, a further extension of date of commission shall be made for which, a fresh application under section 14 need not be filed by such banks/financial institution. We hereby clarify that the Chief Judicial Magistrate, has all powers to extend the period of Writ of Commission to take and deliver possession of the secured assets.

12. In view of the same, Rule is made absolute in terms of prayer Clauses (b) and (c) of the Writ Petition. The Clauses (b) and (c) read as under :-

(b) That this Hon'ble Court be pleased to issued Writ of Certiorari or any other Writ as deem fit and proper by this Hon'ble Court and issue directions to the Hon'ble Chief Judicial Magistrate of Pute to comply with the Guidelines given by the State Government vide Circular dated 10.04.2023 and to follow Guidelines particularly appointing an Advocate as Commissioner to execute the Orders passed u/sec. 14 of the

SARFAESI Act as per directions given by this Hon'ble Court in Writ Petition No. 15285 of 2022 (L&T Finance Limited Versus State of Maharashtra) vide Order dated 17.04.2023;

(c) That this Hon'ble Court be pleased to issue Writ of Mandamus or any other Writ as deem fit and proper by this Hon'ble Court and issue directions to Chief Judicial Magistrate of Pune for expeditious execution of the Order dated 28.02.2023 passed u/sec. 14 of the SARFAESI Act by granting necessary assistance in taking possession of the secured asset by using such force including breaking open the lock or any hurdle thereof by taking assistance of police of concerned police station.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]