

Court No. - 3

Case :- WRIT - C No. - 18575 of 2025

Petitioner :- Dcb Bank Ltd

Respondent :- State Of Uttar Pradesh And 7 Others

Counsel for Petitioner :- Shivang

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

Hon'ble Praveen Kumar Giri,J.

1. Heard Sri Aniket Raj, learned counsel for the petitioner and Sri Dilip Kumar Kesharwani, learned Additional Chief Standing Counsel for the State-respondent.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has made the following prayer:

"i) To issue suitable writ, order, orders or direction in the nature of mandamus, directing the Respondents No. 2 and 3 to forthwith restore possession of the secured assets being "House No. 4, Block H, Sector 02 & 03, Tyagi Market, Village Loni, Pargana & Tehsil - Loni, Ghaziabad, Uttar Pradesh- 201102" to the authorized officer of the Petitioner as envisaged under Section 14 of Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002."

3. Learned counsel for the petitioner has relied upon the judgments of Bombay High Court in **The Nashik Merchant Co-operative Bank (Multi State Scheduled Bank) Versus The District Collector, Jalna and others**, decided on February 28, 2023, **Bank of India Versus M/s Maharana Electricals Pvt. Ltd and others**, decided on September 09, 2024 and **Kotak Mahindra Bank Ltd. and another Versus State of Maharashtra and others**, decided on June 30, 2023, to buttress the argument that the Additional District Magistrate/District Magistrate has the power to execute/entertain a fresh application under Section 14 of Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 when the borrower in an illegal manner trespasses over the said property. He relies upon paragraph nos. 17, 18, 19 and 20 of the case of **The Nashik Merchant Co-operative Bank** (supra) which read as under:

“17. Mr S.V. Adwant, learned advocate appearing for the petitioner also places reliance on the Judgment delivered by the Division Bench of High Court of Andhra Pradesh in case of **M/s. Sri. Balaji Centrifugal Castings Vs. M/s ICICI Bank Limited** reported in (2018) SCC Online Hyd 368, wherein, it is held that there is no bar to secured creditor maintaining more than single application under section 14(1) of the SARFAESI Act for securing the possession of the very same secured assets.

18. The similar view has been reiterated by the High Court of Kerala in the matter of **A.A. Kumaran Vs. Superintendent of Police, Thrissur and Ors**, in WP (C) No. 5875 of 2022 dated 18-05-2022, wherein the court observed thus :-

21. Further, the present case reveals an instance where a person has taken the law into his hands by force and thereafter seeks the benefit of legal principles. If such actions are permitted to be perpetrated, rule of law will suffer immeasurably. The purport of the Act is to divest the owner of a property in the enforcement of security interest and initiate measures to wipe off the liability by resorting to measures including sale. If measures taken for dispossession and consequent sale are inter-meddled by persons like respondents 4 and 5, it would result in a mockery of the rule of law. The will of the people reflected through the legislation will be seriously infringed, if the court remains a mute spectator.

19. The High Court of Madhya Pradesh in the matter of **Smt. Mishri Bai W/o Late Shri Nirmal Kumar and others Vs. Shubh Laxmi Mahila Cooperative Bank Ltd.**, has observed thus :-

The secured creditor is not required to approach again and again before the District Magistrate or DRT for recovery of the amount, once the order has been passed under section 14 of SARFAESI Act until unless the entire outstanding amount is recovered, the order remains valid, therefore, the Tehsildar has not committed any error of law or he does not functus officio unless the entire outstanding amount is recovered by the bank. It is settled law that any order passed by the Authority, quashed by judicial authority or the Court or Tribunal remains valid unless reviewed, recalled, cancelled by the same authority or court or set aside by the Higher Court/Tribunal, thus the order passed by District Magistrate is still valid and Respondent No.1/Bank is free to take steps thereafter until the entire outstanding amount is cleared.

20. The uncontroverted factual aspects in present matter depict that the respondent Nos. 5 and 6 have devised novel, unimaginable and unsustainable modus operandi to defeat ends of justice and fair play. It is not only the matter of physical altercation, but would tantamount to assault on the law and statute. They have the audacity to overrule the law. The growing tendency of overpowering the law cannot be tolerated. In peculiar facts and circumstances of this case, we are inclined to exercise powers under Article 226 of the Constitution of India to protect the rule of law and deprecate rising

tendency of using criminal force against recovery proceeding undertaken by the financial institutions in terms of SARFAESI Act. We do not find any prohibition under the scheme of the SARFAESI Act that comes in the way of District Magistrate or his delegate to re- exercise the powers to execute the orders passed under section 14.”

4. Upon considering the issue at hand, we are at consensus ad idem of the view taken by the Bombay High Court, and accordingly, direct the Additional District Magistrate to grant him opportunity of hearing to the petitioner and pass a fresh order on the fresh application under Section 14 of SARFAESI Act filed before him, in accordance with law. The entire exercise should be completed within a period of two months by the respondent concerned.

5. With the above direction, the writ petition is disposed of.

Order Date :- 4.7.2025

K.K. Maurya

(Praveen Kumar Giri, J.) (Shekhar B. Saraf, J.)