



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1968 OF 2025

- 1] Bayadabai w/o Pandit Bhole
Age : 75 years, Occu.: Household,
R/o Harangul (kh) Laman Tanda,
Tq. Dist. Latur
- 2] Pandit S/o Ganpati Bhole
Age : 77 years, Occu. : Business,
R/o. Harangul (kh) Laman Tanda,
Tq. Dist. Latur
- 3] Gopal S/o Pandit Bhole
Age : 31 years, Occu. Business,
R/o. Harangul (kh) Laman Tanda,
Tq. Dist. Latur
- 4] Rekha W/o. Gopal Bhole
Age : 28 years, Occu. : Household,
R/o. Harangul (kh) Laman Tanda,
Tq. Dist. Latur

.. Petitioners

Versus

- 1] The Union of India,
Through its Secretary,
Department of Financial Services
Ministry of Finance Department,
Shashtri Bhawan, Dr. Rajendra Prasad Road,
New Delhi – 110 001
- 2] The Reserve Bank of India
New Delhi
- 3] The District Magistrate,
Latur Dist. Latur
- 4] Mahindra Rural Housing Finance Limited,
A Company incorporated under the
Companies Act, 1956, Through its authorized officer,
Having company office address at
Ground Floor, Sadashiv Complex, Behind Siddhi
Vinayak Hospital, Opp. Sunrise English School,
Ganesh Nagar, AUSA Road, Latur

.. Respondents

...
Advocate for the petitioner : Mr. S.G. Dodya
DSGI for respondent / UOI : Mr. A.G. Talhar
AGP for the respondent – State : Mrs. Deepali Jape
...

CORAM : **MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : **11 FEBRUARY 2025**

ORDER (MANGESH S. PATIL, J.) :

Invoking the powers of this Court under Article 226 of the Constitution of India, the petitioners are seeking a writ of prohibition against implementation of the order passed by respondent no. 3 – District Magistrate under the The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (**the SARFAESI Act**).

2. We have heard the learned advocate for the petitioners.

3. Mr. Dodya adverts our attention to Ministry of Finance notification dated 18.12.2015, another notification dated 17.06.2021, would submit that respondent no. 4 is a secured creditor and declared as a financial institution, by resorting to sub-section 5 of section 29A of the National Housing Bank Act, 1987 invoking the powers under sub-clause (iv) of clause (m) of sub-section (1) of section (2) of the SARFAESI Act. By virtue of notifications dated 24.02.2020 and 12.02.2021, only in respect of secured debts of Rs. 50 Lakh and above and of Rs. 20 Lakh and above, respectively, was the limit imposed by

the Ministry of Finance pursuant to clause (f) of section 45(i) of the Reserve Bank of India Act, 1934. He would submit that since the petitioners' liability is less than Rs.20 Lakh, the entire process undertaken under the SARFAESI Act including the attachment under section 13 and the order passed under section 14 is without jurisdiction.

4. By adverting to the decision in the matter of **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others; 2023 SCC OnLine 95**, Mr. Dodya submits that the writ petition under Article 226 of the Constitution of India is maintainable and the petitioners are resorting to it to question the power and jurisdiction of respondent no. 3 – District Magistrate.

5. At the first blush, the submission of Mr. Dodya, looks attractive. However, a careful examination of all the above mentioned notifications would reveal that it has been made abundantly clear in the notifications dated 24.02.2020 and 12.02.2021 that the amendment is merely prospective. The specific wording in the notification dated 24.02.2020 mentioning 'except as respects things done or omitted to be done before such supersession', are clear enough to substantiate such inference.

6. Notification dated 24.02.2020 reads as under:-

“S.O. 856 (E). - In exercise of the powers conferred by sub-clause (iv) of clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), and in supersession of the notifications of the Government of India, Ministry of Finance numbers S.O. 2641(E), dated the 5th August, 2016, S.O. 4176(E) dated the 27th August, 2018, and S.O. 5391 (E) dated 24th October, 2018, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies such non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), having assets worth rupees one hundred crore and above, which shall be entitled for enforcement of security interest in secured debts of rupees fifty lakh and above, as financial institutions for the purposes of the said Act.” **(emphasis supplied)**

7. As can be seen from the order passed by respondent no. 3 – District Magistrate under section 14, the petitioners had obtained the loan in the year 2018 and there is nothing to demonstrate that prior to the notification dated 24.02.2020, there was any cap providing for the secured debt being of a particular amount, for the non-banking financial institutes to resort to the provisions of the SARFAESI Act.
8. Besides, admittedly, notice under section 13(2) of the SARFAESI Act was served on 24.07.2021. They did not respond to it neither did they repay the money and the order under section 14 of the SARFAESI Act was passed by respondent no. 3 on 31-07-2024.
9. If such is the state-of-affairs, in our considered view, powers of this Court under Article 226 being a discretionary power, to be exercised in appropriate cases, it cannot be exercised without taking recourse to the remedy available of filing a Securitisation

Application under section 17 of the SARFAESI Act and even without seeking any declaration regarding the notice under section 13(2) and order under section 14 passed under the SARFAESI Act, the petitioners are seeking a blanket relief in the light of prayer clause (B) which is the only prayer and reads as under :-

“(B) By way of writ of Prohibition or any other writ or order in the like nature the respondent no. 4 be restrained to conduct, proceeds and carryout the proceeding of recovery of the said outstanding amount against the petitioners and the said property under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002”

10. The decision in the matter of **Godrej Sare Lee Ltd.** (supra) with respect, has been rendered in the peculiar facts and circumstances of the case. We have assigned additional reasons as to how without taking exception to the steps being taken under the SARFAESI Act and without seeking any declaration regarding sustainability of those steps / order, the petitioners are merely taking a chance to obviate recoveries being made.

11. The writ petition is dismissed.

12. However, the petitioners would be at liberty to resort to the appropriate remedy available to them in law.

13. The observations made herein shall not influence the authorities deciding the petitioners' application etc. which shall be considered in accordance with law.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/