

(2016) 11 BOM CK 0074
In the Bombay High Court
Case No : Writ Petition No. 12909 of 2016

Vijaya Bank through Gen. Manager

APPELLANT

Vs

Prithvi Bricks and Mortar Pvt. Ltd

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14, Section 17(4-A)

Citation : (2017) 2 MhLJ 341

Hon'ble Judges : Anoop V. Mohta and A.S. Gadkari, JJ.

Bench : Division Bench

Advocate : Mr. Madhur Rai I/by PRS Legal, Advocate, for the Petitioner; Mr. C.P. Yadav, AGP, for the Respondent/State

Final Decision : Disposed Off

Judgement

Anoop V. Mohta, J (Oral) :- Heard finally by consent.

2. The Petitioner undertakes to file affidavit of service within two days, as statement is made that all the contesting parties/respondents are served. On submission, the Petitioner is permitted to delete Respondents 6 and 7. Amendment to be carried out forthwith.

3. We are inclined to dispose of the present writ petition as the submission is restricted and made that Misc. Application No CC No.70/MISC/2016 is still pending as the learned Chief Metropolitan Magistrate, Esplanade, Mumbai, by adjourning the matter to await the order of the learned Small Causes Court, Mumbai as the issue is revolving around the tenancy/eviction from the assets/premises in question of Respondent No.1.

4. In view of the following amended provision of Section 17(4A) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act), with effect from 1.9.2016, which is reproduced below, the learned Magistrate is now required to decide the issue in

accordance with law.

"17 Application against measures to recover secured debts. ? (1) Any person (including borrower), aggrieved by any of the measures referred to in subsection (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter ?.....

(2) ?..

(3) ?..

(4) ?..

4A. Where (i) any person, in an application under subsection (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy. ?...."

The relevant portion of Section 14 of the SARFAESI Act is as under:

"14 Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—

1. ?...

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.)"

(emphasis added)

5. In view of this, we are inclined to dispose of the writ petition as there is no point in keeping this petition pending. The learned Chief Metropolitan Magistrate to decide such Application in view of the amended provisions as early as possible in accordance with law. Order accordingly.

6. No costs.