

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.1887 OF 2018

M/s. Vibgyor Texotech Ltd.
A Company incorporated under
the Companies Act, 1956,
having its Registered Office
at 310, Navyug Industrial Estate,
Tokersey Jivraj Road, Sewree,
Mumbai-400 015.
Through Authorized Signatory
Mr. Parshuram Sadashiv More

... Petitioner

Vs

1 Board of Directors
State of Bank of India,
Represented by its Chairman &
Managing Director, having its office
at Nariman Point, Mumbai-400 021.

2 Chairman, SBI
having its office at
State Bank Bhavan, P.B.No.12,
Madame Cama Road,
Mumbai 400 021

3 Authorized Officer,
State Bank of India,
Stressed Assets Management
Branch,
The Arcade, 2nd floor,
World Trade Centre, Cuffe Parade,

Colaba Mumbai-400 005.

4 The Export Credit Guarantee
Corporation of India Limited,
Express Towers, 10th floor,
Nariman Point, Mumbai 400 021

5 District Magistrate,
Thane District,
Thane.

6 Tehsildar,
Killa Bunder Road,
Malonde, Vasai Village,
Taluka: Vasai, Zilla Thane,
Thane 401 201.

7 Senior Inspector of Police,
Vasai Police Station,
Vasai, Waliv, Palghar Dist.
Maharashtra State.

8 Mandal Adhikary (Circle
Officer),
Mandvi Taluka: Vasai,
District Palghar, Maharashtra State

9 The Governor,
Reserve Bank of India
Central Office Building,
Shahid Bhagat Singh Road,
Mumbai 400 001

10 State of Maharashtra
Mantralaya, Mumbai

11 The Secretary,
Department of Banking,
Jeevan Deep Building,
Parliament Street,
New Delhi 110 001

12 Debt Recovery Tribunal I,
Scindia House, N.M.Marg,
Opp. L & T House, Ballard Estate,
Mumbai 400 038.

13 Debt Recovery Tribunal II,
Scindia House, N.M.Marg,
Opp. L & T House, Ballard Estate,
Mumbai 400 038.

14 Debt Recovery Appellate Tribunal,
Scindia House, N.M.Marg,
Opp. L & T House, Ballard Estate,
Mumbai 400 038.

15 Pravin Wipers and Ancillaries Pvt. Ltd.
Regd Office: 5 & 8 Ram Mandir Idl.,
Estate No.2, Ram Mandir Road,
Goregaon (E), Mumbai 400 063.

16 The Union of India, through
Ministry of Micro, Small and
Medium Enterprises
Udyog Bhawan, Raji Marg,
New Delhi, Delhi 110001

... Respondents

...

Mr. Mathews J. Nedumpara I/by Mr. Nizam Tanveer
Mohammed Sharif for the Petitioner.

Mr. Rohit Gupta with Mr. Akbar Rizvi I/by M/s. AKS Legal

Consultants for the Respondent Nos.1 to 3.
Mr. Sukanta Karmakar, AGP for State-R.No.10.

CORAM : K. K. TATED &
SANDEEP K. SHINDE JJ.
DATE : 7 SEPTEMBER, 2018.

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

The Petitioner has essentially challenged the notice dated 11.5.2018 of the Respondent No.8-Circle Officer, Mandvi, Taluka: Vasai, Dist: Palghar whereby possession of the secured asset was scheduled to be taken on 5.6.2018 at 11.30 a.m. Besides, Petitioner seeks a declaration that no amount is due to the Respondent-Bank; that the bank has no more enforceable right against the Petitioner, since on account of breach of contract, culpable negligence, customer unfriendly attitude and malicious actions on the part of the bank has resulted in huge loss to the Petitioner. Petitioner also seeks declaration that it is entitled to a judicial forum for adjudication of inter-se disputes between it and the Respondent-Bank and till then is entitled to be protected against the powers vested in the Respondent-Bank/Secured Creditor. Further seeks a declaration that access to justice is a fundamental right and till DRT-I, II and DRAT,

Mumbai are made functional, Petitioner is entitled to have right to its property, a valuable constitutional right. It also sought transfer of proceedings in Securitisation Appeal No.04 of 2012 filed before the DRT-I, Mumbai.

2 Before adverting to the various contentions raised by the Petitioner , it may be stated that on 5.6.2018, the Division Bench of this Court had directed the Advocate for Petitioners to take instructions as to whether the Petitioner was willing to deposit 50% of the amount dues being stated in the notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (Hereinafter referred to as '**SARFAESI** Act'). It appears advocate for the Petitioner could not obtain the instructions as the person who was giving instructions on behalf of the Petitioner-Company was not traceable. Be that as it may, vide order dated 5.6.2018, interim relief was declined by Division Bench of this Court to the Petitioners.

3 Mr. Gupta appearing for the Respondent-Bank has placed on record orders passed in proceedings adopted by the Petitioner

herein as well as by his so-called tenant M/s. Pravin Wipers and Ancillaries Pvt. Ltd who claimed to be in possession of the secured asset, of which possession was scheduled to be taken by the Circle Inspector vide notice dated 11.5.2018.

4 It is a admitted fact that Executive Magistrate passed an order under Section 14 of the SARFAESI Act on 16.3.2017 and further directed Tehsildar, Vasai to take possession of the building no.2 at Village: Waliv Taluka: Vasai, Dist: Palghar secured asset. That Rs.53,46,00,000/- (approx.) are dues payable by the Petitioner to the Respondent-Bank.

5 It appears from pleadings and compilation of documents filed by respondents (of multiple proceedings) that the Petitioner herein made each and every attempt to stall the recovery of dues by adopting multiple proceedings. He has filed Securitisation Appeal No.4 of 2012 and challenged the notice dated 3.8.2011 issued under Section 13(2) and notice dated 4.11.2011 issued under Section 13(4) of the said Act on several grounds. Admittedly, the said appeal is still pending before the DRT. It may be stated that in

the said appeal, the Petitioner has claimed compensation and damages in sum of Rs.100 Crores from the bank for breach of contract and malicious act at the hands of the Respondent-bank. In the said Securitisation appeal, Petitioner has also challenged power of authorised officer and contended that authorised officer is a Tribunal in the substitution of the Civil Court being conferred with powers of the Civil Court. Be that as it may, fact remains that the recovery proceedings adopted against the Petitioner by the Bank travelled much distance and culminated into the order dated 16.3.2017 passed under Section 14 of the said Act followed by notice of possession dated 11.5.2018 which is challenged in the present Petition.

6 Mr. Gupta appearing for the Respondent-Bank has placed on record a copy of the Writ Petition (L) No.1251 of 2015 filed by the Petitioner herein whereby notices issued under Section 13(2) and Section 14 of the Securitisation Act were challenged. In the said Writ Petition, grounds raised were almost similar which are sought to be pressed in the instant Petition.

7 We have perused the judgment dated 20.7.2015 passed by the Division Bench in Writ Petition (L) No.1251 of 2015 wherein it is observed in paragraph 13 as under:

“13. We are of the view that in this background and with the prima facie observations of the DRT, this petition is indeed a gross abuse of the process of this Court. The legal and constitutional questions need not be gone into at the instance of a party like the petitioner. Further, any academic discussion on the legal and constitutional issues which have been raised before us is unnecessary and uncalled for at this stage. The proceedings before the DRT and the DRAT are yet to conclude. All adverse orders therein are capable of being challenged and after the matter reaches the higher courts, it is open for the petitioner to argue and raise all the legal and constitutional issues. Presently, the whole intent and purpose was to somehow or the other avoid handing over of possession of the secured asset. In order to achieve that, the petitioner firstly moved this Court and placed before the Court some facts pertaining to a third party being in possession. That third party then promptly files an application for interim relief in the pending suit in the court at Vasai against the Director of the petitioner and others. That Director had already filed an independent proceeding against the Securitisation notice in the DRT, Pune. The petitioner's appeal / Securitisation Appeal No.4 of 2012 is pending and all this was known to the petitioner. Yet, after inducting a alleged third party in possession and to facilitate it, such collusive proceedings are brought before this Court. In the present circumstances really the protection given by this Court is completely misused and to institute multiple proceedings.”

Petition as such was dismissed with costs quantified at

Rs.50,000/-.

8 The learned counsel for the Respondent-Bank has invited our attention to the deliberate attempts made by the petitioner to obstruct and restrain the bank from taking possession of the secured assets. It appears from compilation that one M/s. Pravin Wipers and Ancillaries Pvt. Ltd. who claims tenancy qua 'Secured Asset' has filed Regular Civil Suit No.33 of 2017 in the Court of Civil Judge Junior Division (Vasai) and sought a declaration that Civil Court alone have jurisdiction to adjudicate lis between it and the defendant (Petitioner herein). In the said Suit, he has also challenged the order dated 16.3.2017 passed under Section 14 of the Securitisation Act and the directions issued by the District Magistrate for taking possession of the secured assets. Pending suit, application for temporary injunction was filed under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908. The learned Civil Judge Senior Division, Vasai rejected the application on 22.12.2017. The said order was carried in Appeal From Order (St) No.36597 of 2017

before this Court. The learned Single Judge of this Court dismissed the said appeal vide order dated 16.1.2018. It may also be stated that Mr. Nedumpara who is now appearing for the Petitioner had appeared in the said Appeal From Order proceedings. The said order dated 16.1.2018 was carried before the Supreme Court but the same was withdrawn by the Petitioner. Collusion between the parties to the suit is apparent from appearances of lawyers. It shows all proceeding/Petitions, filed by the Petitioner were/are collusive with sole intention to stall recovery proceedings adopted by the Bank.

Mr. Gupta appearing for the Respondent has brought to our notice yet another petition filed by M/s. Pravin Wipers and Ancillaries Pvt. Ltd. being Writ Petition (St) No.15302 of 2018, which was withdrawn on 23.8.2018.

9 The various proceedings adopted by the Petitioner either itself or otherwise, Petitioner was unsuccessful throughout in all such proceedings having found proceedings were collusive and were not bonafide.

10 We have gone through the instant Petition wherein

following grounds are raised;

(I) M/s. Pravin Wipers and Ancillaries Pvt. Ltd. is in possession of the secured asset and, therefore, the order passed by the District Magistrate under Section 14 is illegal;

(II) Coram of the DRT, Mumbai is not available to the Petitioner since fire broke out on the third floor of Scindia House;

(III) Respondent-Bank has no enforceable right as against the Petitioner and it is the Petitioner who is entitled to the remedies as against the bank. That even assuming bank has rights and remedies as against the Petitioner, respective rights and obligations which are in realm of contract needs to be adjudicated by allowing parties to dispute to adduce evidence and contradict the same by competent judicial forum;

(iv) Petitioner has no forum in so far as its rights faced with right of forcible dispossession.

10A So far as first ground is concerned, proceedings adopted by M/s. Pravin Wipers and Ancillaries Pvt. Ltd. claiming tenancy qua secured asset, was dismissed throughout upto Apex Court.

As far as second ground is concerned, DRT, Mumbai is functional where Petitioners' Securitisation Appeal No.4 of 2012 is pending.

So far as third ground is concerned, he has taken up this ground in its Securitisation Appeal and was also agitated in WP (L) No.1251 of 2015.

11 Heard learned counsel for the Petitioner and the learned counsel for Respondents.

12 Indisputedly, order dated 16.3.2017 passed by the District Magistrate under Section 14 has attained the finality and has been executed. The Petitioner herein has not challenged the order dated 16.3.2017 either by filing an application under Section 17 of the SARFAESI Act or otherwise. Record, therefore, shows that secured creditor has followed due procedure for enforcing security interest in the secured assets and noting has been pointed out by the Petitioner that the bank had flouted any of the provisions while enforcing its security interest.

13 Indisputedly, alternate remedy is available under the

SARFAESI Act against the impugned notice dated 11.5.2018 and even against the order dated 16.3.2017 passed under Section 14. Precisely on the same grounds earlier Writ Petition (L) No.1251 of 2015 was dismissed by the Court. Petitioner herein has already filed an application being Securitisation Appeal No.4 of 2012 before the DRT-I on the similar grounds which are urged in the present petition. Infact, same grounds were also urged in Writ Petition (L) No.1251 of 2015. Thus, present petition is third proceeding, on same ground.

14 Multiple proceedings would also show that the Petitioner had set up M/s. Pravin Wipers and Ancillaries Pvt. Ltd. to obstruct the proceedings by claiming tenancy qua secured assets. However, all suit proceedings filed by so-called tenant were dismissed throughout. We, therefore, hold and conclude that the Petitioner has filed and initiated various proceedings itself or through some other persons, are/were not bonafide in nature. Though the Petitioner has exhausted alternative remedy by filing Securitisation Appeal No.4 of 2012, he has chosen to file this Writ

Petition before this Court invoking extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Thus, in our considered view, instant Writ Petition is nothing but abuse of process of law. The Supreme Court in **Dnyandeo Sabaji Naik v. Mrs. Pradnya Prakash Khadekar** in SLP (C) Nos.25331-33 of 2015, decided on 1.3.2017, observed as under:

“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practiced in our country, there is no premium on the truth.”

15 In the result, we dismiss the Petition with costs quantified at Rs.50,000/- to be deposited by the Petitioner in this Court within one month from today.

16 If such cost is not deposited, the same shall be recovered as arrears of land revenue under the Maharashtra Land Revenue Code, 1966.

17 Petition is disposed of.

18 No order as to costs.

(SANDEEP K. SHINDE, J.)

(K. K. TATED, J.)