



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

WRIT PETITION NO.386 OF 2023

Bank of Maharashtra. ..Petitioner  
Versus  
The Directorate of Revenue Intelligence & Anr. ..Respondents

Mr. Sarthak Utangale i/b. M/s. Utangale & Co., for the Petitioner.

Mr. Jitendra B. Mishra with Mr. Dhananjay Deshmukh, for Respondent No.1.

CORAM : G. S. KULKARNI &  
FIRDOSH P. POONIWALLA, JJ.

DATE : 16 JANUARY 2024.

Oral Order: (Per G. S. Kulkarni, J.)

1. Rule, returnable forthwith. Mr. Mishra, learned Counsel waives service for respondent No.1. Respondent No.2 is served, however, he is not represented. By consent of the parties as appearing, heard finally.
2. By this petition filed under Article 226 of the Constitution, the petitioner has prayed for the following reliefs:

“a. That this Hon’ble Court may be pleased to quash and set aside the letter dated 02.11.2015 issued by Respondent No. 1 asking the Petitioner to not take any decision on the property available with the Petitioner as per Exhibit -A.

b. That this Hon’ble Court may be pleased to declare that the Petitioner’s right as a Financial Creditor is superior to the rights under the Customs Act, 1962 and therefore, the Petitioner may be pleased to complete the process of recovery of dues for the sum of Rs. 7.44 crores payable by the Respondent No. 02 under the provisions of the SARFAESI Act, 2002.

Page 1 of 10

16 January 2024

c. That the Hon'ble Court be pleased to direct the Respondent No. 1 to disclose the status of the investigation to the Petitioner for completing proceeding for sale of assets of Respondent No. 02 under the provisions of the SARFAESI Act 2002;

d. That the Hon'ble Court be pleased to direct the Respondent No. 01 to provide the details of the attachment of property, if any, of the Respondent No. 02.

e. This Hon'ble Court be pleased to restrain the Respondent No.01 to not attach the properties of Respondent No.2 bearing Residential Flats 1, 2, 3, 4, 5, 6, 7, 8 consisting of Three 2BHK and Five 1 BHK flats in the building known as Park View, Plot No.205, Village Murbi, Sector 19, Kharghar, Navi Mumbai and Residential Flat 112 in Om Rachana, Plot No.03, Sector 17, Vashi, Navi Mumbai, as the same has been mortgaged in favour of Petitioner by the Respondent No.02.”

3. The case of the petitioner is that the petitioner had extended financial facilities to respondent No.2. Respondent No.2 had executed a Memorandum of record of an equitable mortgage of the secured assets. Further, the entire sanctioned credit facilities were collaterally secured. Respondent No.2 however defaulted in making payment of the amounts as lent by the petitioner. On 19 August 2015 in the petitioner's books, the account of respondent No.2 was declared as Non-Performing Asset ( NPA ). The petitioner in these circumstances intended to proceed to exercise its powers under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '**SARFAESI Act**') to recover the amounts. Accordingly, a notice was issued to respondent No.2 under the provisions of Section 13(2) of the SARFAESI Act. As despite issuance of such notice,

respondent No.2 did not come forward to pay the amounts as defaulted and respondent No.2 continued to be a defaulter. The petitioner, thus initiated action by invoking Section 14 of the SARFAESI Act, so as to obtain appropriate orders from the District Magistrate, Raigad. However, before any order could be passed on such proceedings, the impugned letter dated 2 November 2015 came to be addressed to the petitioner, on behalf of the Directorate of Revenue Intelligence / respondent No.1 The contents of the said letter read thus:-

“F. No.DR1/MZU/B/INT-66/2015                      Dated: 02.11.2015.

The Manager,  
Bank of Maharashtra,  
Nerul Township Branch, Sahayof Aptt., Sector 9,  
Nerul, Navi Mumbai – 400706

Gentleman,

**Sub: Investigations under the provisions of the Customs Act, 1962 - reg**

This unit is conducting investigations into smuggling of Red Sanders smuggling by a syndicate masterminded by one Rajendra Vitthal Shinde and has seized 7.12 Mts of Red Sanders, prohibited under the CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) on 17-08-2015 valued at Rs.2.86 Crores under the Customs Act, 1962.

2. During the course of investigations, it has been learnt that Rajendra Vitthal Shinde and certain firms/entities controlled by him, have their bank account in your bank (letter dated 14.10.2015 communicated to protect the interest of revenue). The name of such firms and their respective bank account number are as mentioned in the table below:

S. No.	Name of the Person / Firm (Account holder)	Account Number
1.	Rajendra Vitthal Shinde	000068009882646
2.	M/s. R. S. Enterprises	60094982251
3.	M/s. R. S. Enterprises	60108738405

4.	M/s. V. S. Corporation	60102756645
5.	M/s. Arowana Exports	60102759464
6.	M/s. Arowana Exports	60117102551
7.	M/s. R. S. Distributor	60102758712
8.	M/s. R. S. Realty	60102758382
9.	M/s. R. S. Automibles	60102759045

3. Investigations have indicated smuggling of huge quantities of Red Sanders in the past and this unit is at present conducting financial investigations to establish the extend of crime proceeds which have been layered and integrated into the other legal business being carried out by Rajendra Vitthal Shinde and his associates. Prima facie, there also appears to be a serious case of money laundering which will be investigated by the competent authorities.

4. Investigations have further revealed that huge amount of loans have been sanctioned to the firms controlled by Rajendra Vitthal Shinde.

5. As the investigations are in progress, you are hereby informed not to take any decision on any of the property document available with you without consulting this office. On completion of investigations, we would forward notice to your bank for your information, please.

6. ... ..

Sd/-  
(Ashish Mangaonkar)  
Senior Intelligence Officer”

(emphasis supplied)

4. As seen from the aforesaid letter of respondent No.1, merely for the reason that investigations was in progress against respondent No.2, the Senior Intelligence Officer informed the petitioner not to take any decision on any property or the documents of respondent No.2, available with the petitioner in its capacity as a secured creditor, without consulting respondent No.1. It was also recorded that on completion of the

investigation, respondent No.1 would forward a notice to the petitioner for information.

5. Considering such letter to be an embargo on the further action to be taken under the SARFAESI Act, the petitioner is before the Court praying for the aforesaid reliefs.

6. Learned Counsel for the petitioner in support of the reliefs as prayed for in the petition, would submit that respondent No.1 on the basis of such letter would not have jurisdiction or authority to restrain the petitioner from proceeding with the action which the petitioner had initiated against respondent No.2 under the provisions of the SARFAESI Act. Referring to the provisions of Section 142A of the Customs Act, 1962, it is submitted that in respect of any duty, penalty or interest, what is provided for in the said provision is that respondent No.1 would have first charge on the property of the assessee. It is submitted that the consequence under Section 142A can be envisaged by saving the action initiated under the SARFAESI Act, and thereafter such first charge on the property of the assessee could be recognized. It is therefore, his submission that the impugned letter cannot be an embargo on the rights of the petitioner bank, in recovering the amounts due and payable to the petitioner as a secured creditor, by selling the mortgaged assets. In support of this contention, learned Counsel for the petitioner has also placed

reliance on the order dated 24 February 2023 passed by the Co-ordinate Bench of this Court in **Bank of India Vs. Rajendra Vitthal Shinde & Ors.**<sup>1</sup>

7. Mr. Mishra, learned Counsel for respondent No.1 would not dispute the tenor of the letter dated 2 November 2015. He submits that as set out in the said letter, the investigation was in progress, which was in respect of not only respondent No.2 but also the other entities as set out in the impugned letter.

8. Having heard learned Counsel for the parties and having perused the record, in our opinion, there is much substance in the contention as urged on behalf of the petitioner. The only source of power for the respondents in purporting to address the impugned letter can be traced to Section 142A of the Customs Act, being a provision which recognizes the first charge in regard to any duty, penalty, interest or any other sum payable by an assessee or any other person under the Customs Act and such first charge is notwithstanding anything to the contrary contained in any Central Act or State Act, and thereafter, saving the provisions under the SARFAESI Act. Section 142A of the Customs Act reads thus:-

**142A. Liability under Act to be first charge.**

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under

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<sup>1</sup> Writ Petition No.13233/2016

this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, (1 of 1956 51 of 1956)the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, (54 of 2002.) be the first charge on the property of the assessee or the person, as the case may be.

9. We may also observe that in so far as the recovery of the debts which are due and payable by respondent No.2 to the petitioner are concerned, certainly the petitioner has acted under the provisions of the SARFAESI Act which is a Special Act in so far as such recovery is concerned. Section 35 of the SARFAESI Act would ordain that the provisions of such Act shall have an overriding effect over the other laws. Section 35 of the SARFAESI Act reads thus:-

**“35. The provisions of this Act to override other laws.**

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

10. Thus on a cumulative reading of Section 142A of the Customs Act and Section 35 of the SARFAESI Act, it would be clear that the recovery as initiated by the petitioner under the SARFAESI Act cannot be impeded by the respondents by taking recourse to Section 142A of the Customs Act. The reason being that Section 142A itself is a provision which saves the provisions of the SARFAESI Act under which the action was resorted

by the petitioner to recover its dues from respondent No.2. In any event, it is well settled that unless there is a preference given to a Crown debt by a statute, the dues of a secured creditor like the petitioner would have preference over Crown debts. (See: **Connectwell Industries Pvt. Ltd. Vs. Union of India through Ministry of Finance & Ors.**<sup>2</sup>; **Dena Bank V. Bhikhabhai Prabhudas Parekh & Co.**<sup>3</sup>; **Union of India Vs. SICOM Ltd.**<sup>4</sup>; **Bombay Stock Exchange V. V. S. Kandalgaonkar**<sup>5</sup>; **CIT Vs. Monnet Ispat & Energy Ltd.**<sup>6</sup>.)

11. The Division Bench of this Court in **Bank of India Vs. Rajendra Vitthal Shinde & Ors.** (supra) also considered the provisions of Section 142A of the Customs Act and made the following observations:

5. ... ..The overriding effect of section 142A as regards the duty, penalty and interest under the Customs Act, 1962 is subject to the Central Act, State Acts provided in this section itself, which includes the SARFAESI Act. Therefore, the claim of Respondent–Custom Authorities for the overriding charge under section 142A of the Customs Act, 1962 itself makes an exception in respect of the SARFAESI Act. Therefore, learned counsel for the Petitioner is right in contending that the Petitioner would have the overriding priority over the charge of Respondent– Custom Authorities.

6. Learned counsel for the Respondent–Custom Authorities submits that though the Petitioner would have priority, it does not mean the Respondent–Custom Authorities have no claim at all against the property in question and the Petitioner should be

<sup>2</sup> (2020)5 SCC 373

<sup>3</sup> (2000)5 SCC 694

<sup>4</sup> (2009)2 SCC 121

<sup>5</sup> (2015)2 SCC 1

<sup>6</sup> (2018)18 SCC 786



subjected to the conditions if the Petitioner is proceeding to take measures under the SARFAESI Act to sell the property in question, so that, if any amount is balance over and above the claim of Petitioner, the other parties who may have claims, such as the Respondent–Custom Authorities, would not be prejudiced.

8. Learned counsel for the Petitioner states that the Petitioner bank would proceed to take measures under the SARFAESI Act and if any amount remains balance after satisfying the claim of Petitioner, the Petitioner is under a duty to distribute the balance amount as per the claims received. The statement made by learned counsel for the Petitioner on instructions is accepted. We permit the Petitioner to proceed to take measures under the SARFAESI Act in respect of the property in question. The Petitioner–Bank will, if such a request is received from the Respondent–Custom Authorities to inform them about the action taken by the Petitioner and the quantum of sale proceeds, will give necessary information to the Respondent–Custom Authorities.”

We find ourselves in complete agreement with the view taken by the co-ordinate Bench of this Court in the case **Bank of India Vs. Rajendra Vitthal Shinde & Ors.** (supra).

12. We may also observe that in the present case the impugned letter has been addressed at the stage of investigation. It is averred in the reply affidavit that a final order-in-original is passed against respondent No.2. It is informed by the learned Counsel for the petitioner that such order is subject matter of challenge in independent proceedings. Thus, the impugned communication in any event would pale into insignificance.

13. Be that as it may, we kept open all the contentions of respondent No.1 in regard to any recovery it may have against the parties whose names are set out in the impugned communication, and which can be certainly dealt by respondent No.1 in a manner known to law. However, in so far as the action as initiated by the petitioner under the SARFAESI Act is concerned, the same needs to proceed further, for the reasons as set out hereinabove.

14. In the light of the above discussion, we allow this writ petition by the following order:

**ORDER**

- i. The impugned communication dated 2 November 2015 is quashed and set aside.
- ii. The petitioner is permitted to proceed further in regard to the actions against respondent No.2 and the secured assets, as initiated under the SARFAESI Act.
- iii. Needless to observe that all contentions of respondent No.1 against the defaulters under the Customs Act, are expressly kept open.

15. Rule is accordingly made absolute in the above terms. No costs.

[FIRDOSH P. POONIWALLA, J.]

[G. S. KULKARNI, J.]