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

WRIT PETITION NO.4099 OF 2024

M/s. Pyramid Developers,]
a Partnership Firm]
Through its Partner Mr. Saleh Mithiborwala]
Having Office at Dheeraj Heritage,]
Santacruz (West), Mumbai.] .. Petitioner

Versus

1. Union of India,]
Through Ministry of Finance,]
Having Office at Aaykar Bhavan, Mumbai.]
2. Reserve Bank of India,]
Fort, Mumbai.]
3. M.J. Shah Capital Private Limited,]
Having Office at Vile Parle, Mumbai.]
4. State of Maharashtra,]
Through Office of the Government Pleader,]
High Court, Bombay.] .. Respondents

Mr. Prathamesh Kamat with Mr. Kayush Zaiwalla, i/by Ms. Sapana Rachure, Advocates for the Petitioner.

Mr. Shreyas S. Deshpande, Advocate for Respondent No.1.

Mr. Vijay Salokhe with Ms. Kirti Ojha and Mr. Ankit Upadhyay, Advocates, i/by BLAC & Co., for Respondent No.2.

Mr. Ashok M. Saraogi with Mr. Prajot H. Jaggi and Ms. Daksha A. Parmar, Advocates for Respondent No.3.

Smt. Anupama Pawar, Assistant Government Pleader for Respondent No.4.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

The date on which the arguments were heard : 13TH DECEMBER, 2024.

The date on which the Judgment is pronounced : 21st FEBRUARY, 2025.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The petitioner, a Partnership Firm, registered under the Indian

Partnership Act, 1932 through its Partner has filed this writ petition under Articles 226 and 227 of the Constitution of India raising a challenge to the initiation of proceedings by the 3rd respondent – M/s. M.J. Shah Capital Pvt. Ltd., a Company incorporated under the Companies Act, 2013 by invoking the provisions of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(for short, "the Act of 2002")*. The petitioner seeks issuance of a writ of Prohibition so as to restrain the learned Chief Metropolitan Magistrate from proceeding with consideration of the Securitization Application No.598 of 2024 *(M.J. Shah Capital Pvt. Ltd. Vs. Pyramid Developers and Ors.)* on the premise that the 3rd respondent is not a "financial institution", as defined by Section 2(1)(m)(iv) of the Act of 2002 and hence it cannot take recourse to the provisions of the Act of 2002 for enforcing its security interest.

2. The facts in brief are that according to the 3rd respondent, it had provided financial assistance of Rs.7.50 crores, to be disbursed from time to time, to the Partnership Firm as per its requirements pursuant to a loan agreement dated 10th October 2017. In lieu of the aforesaid, a mortgage was created with regard to a flat owned by the Partnership Firm. On the ground that the Partnership Firm failed to repay the outstanding amount, notice under Section 13(2) of the Act of 2002 was issued on 30th September 2023. In its reply an objection was raised by the Partnership

Firm that the 3rd respondent had no authority to invoke the provisions of the Act of 2002 for recovering its dues. It is thereafter that the 3rd respondent filed an application under the provisions of Section 14 of the Act of 2002 dated 29th April 2024 seeking grant of assistance to obtain possession of the secured asset. On being served with the aforesaid proceedings, the Partnership Firm has approached this Court seeking issuance of a Writ of Prohibition.

3. Mr. Prathamesh Kamat, learned counsel for the petitioner-Partnership Firm referred to various provisions of the Act of 2002 and especially Section 2(1)(zd) which defines "secured creditor", Section 2(1)(m) that defines "financial institution" as well as Section 14 of the Act of 2002 wherein such secured creditor can invoke provisions of Section 14 of the Act of 2002. It was submitted that for a Non-Banking Financial Company to be considered as a "financial institution" as per Notification dated 24th February 2020, it had to have assets worth Rs.100 crores and above, secured debts worth Rs.50 lakhs and above which figure was modified by Notification dated 12th February 2021 reducing that amount to Rs.20 lakhs and above. Referring to the affidavit-in-reply filed on behalf of the Reserve Bank of India - 2nd respondent, it was submitted that the asset worth of the 3rd respondent was Rs.16.30 crores and hence it did not satisfy the requirements of the Notification dated 24th February 2020. On the aforesaid basis, it was urged that as the 3rd respondent was not a

financial institution, it could not invoke the provisions of Section 14 of the Act of 2002. To substantiate his contention that a writ of Prohibition ought to be issued in such circumstances, the learned counsel placed reliance on the decisions in *S.C. Prashar and Anr. Vs. Vasantsen Dwarkadas and Ors., AIR 1956 Bom 530, S. Govinda Menon Vs. The Union of India and Anr., AIR 1967 SC 1274* and *Virendra Rathore and Ors. Vs. Tehsildar Distt. Mandsaur (Madhya Pradesh) SRG Housing Finance Limited and Ors., 2024 SCC OnLine MP 3427*. On the aspect of availability of an alternate remedy of challenging an order passed under Section 14 of the Act of 2002, it was submitted that since the Partnership Firm was seeking issuance of a writ of Prohibition and the proceedings under Section 14 of the Act of 2002 were yet to be decided, there was no question of any such remedy being available at this stage. Since an issue of jurisdiction was raised by the Partnership Firm on undisputed facts, the writ petition ought to be entertained on merits and adjudicated. He also referred to the judgment of the Supreme Court in *Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors., 2023 SCC OnLine SC 95*. It was thus prayed that a Writ of Prohibition as prayed for be issued restraining the Chief Metropolitan Magistrate from entertaining the application under Section 14 of the Act of 2002.

4. On the other hand Mr. Ashok M. Saraogi, learned counsel appearing for the 3rd respondent referred to the affidavit-in-reply as filed and

opposed the writ petition. At the outset, he submitted that the writ petition was premature inasmuch as no order was passed by the Chief Metropolitan Magistrate on the application filed under Section 14 of the Act of 2002. As and when such order was passed, it would be open for the Partnership Firm to avail its remedies under Section 17 of the Act of 2002. The Partnership Firm having neglected to pay the amount of arrears, it was not entitled to any discretionary relief. Without prejudice, it was submitted that the 3rd respondent had rightly filed the proceedings under Section 14 of the Act of 2002. It was contended that since the loan agreement between the 3rd respondent and the Partnership Firm was entered into on 10th October 2017, the Notification issued by the Ministry of Finance, New Delhi on 24th February 2020 could not be applied retrospectively. In the proceedings filed under Section 14 of the Act of 2002, it was open for the learned Chief Metropolitan Magistrate to consider all contentions of the Partnership Firm and pass an order. Reliance was placed on the decisions in *Mardia Chemicals Ltd. Vs. Union of India, (2004) 4 SCC 311, Phoenix ARC (P) Ltd. Vs. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345, Anju Chaudhary Vs. State of U.P., (2013) 6 SCC 384, Union of India Vs. W.N. Chadha, 1993 Supp (4) SCC 260, Samaj Parivartan Samudaya Vs. State of Karnataka, (2012) 7 SCC 407* and *Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517* to contend that the writ petition did not deserve to be

entertained and that all challenges could be raised by the Partnership Firm in proceedings that could be filed for challenging any adverse order, if passed, under Section 14 of the Act of 2002. It was thus submitted that the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents on record. The Partnership Firm seeks issuance of a Writ of Prohibition on the premise that the 3rd respondent is not a "financial institution" as contemplated by Section 2(1)(m)(iv) of the Act of 2002 and hence it is not competent to maintain an application under Section 14 of the Act of 2002. It is urged that only a "secured creditor" as defined by Section 2(1)(zd) of the Act of 2002 can seek assistance of the Chief Metropolitan Magistrate in taking possession of the secured asset. To consider this aspect a reference may be made to the judgment of the Division Bench in *S.C. Prashar and Anr. (supra)* wherein it has been held that a plea with regard to lack of jurisdiction can be considered in exercise of writ jurisdiction. It was observed that in case of complete absence of jurisdiction which is apparent on the face of record, it would be permissible for the Court to prevent such Authority from assuming jurisdiction which it did not possess. A writ of Prohibition could be issued in such a contingency. As held by the Supreme Court in *S. Govinda Menon (supra)* that if there is want of jurisdiction,

then a Writ of Prohibition would lie so as to forbid an inferior Court or Tribunal from continuing proceedings in excess of its jurisdiction. It would therefore be necessary to consider as to whether the 3rd respondent is entitled to maintain the application filed by it under Section 14 of the Act of 2002.

Since the prayer is to grant a writ of Prohibition, the objection raised on behalf of the 3rd respondent of availability of an alternate remedy after the order is passed under Section 14 of the Act of 2002 does not warrant acceptance. If it is shown that the 3rd respondent is not a financial institution nor a secured creditor, as defined under the Act of 2002, it would not be in a position to invoke the jurisdiction under Section 14 of the Act of 2002 for seeking any assistance for taking possession of the secured asset. It would therefore require consideration as to whether the Chief Metropolitan Magistrate is empowered to entertain the application preferred by the 3rd respondent under Section 14 of the Act of 2002 and provide assistance as sought.

6. In this regard, it would be necessary to refer to the statutory scheme under the Act of 2002. A “secured creditor” is defined under Section 2(1)(zd)(i) of the Act of 2002 to mean a “financial institution” holding any right, title or interest upon any tangible or intangible asset. Section 2(1)(m) of the Act of 2002 defines a ‘financial institution’ and sub-clause (iv)

thereof being material is reproduced hereunder :-

> 2(1)(m)(iv) Any other institution or non-banking financial company, as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act".

Notification dated 24th February 2020 has been issued by the Central Government wherein it is stated that a financial institution for the purposes of the Act of 2002 ought to have assets worth Rs.100 crores and above to enable enforcement of security interest in secured debts of Rs.50 lakhs and above. The figure “50 lakhs” has been substituted by the figure “Rs.20 lakhs and above” by amending the Notification dated 24th February 2020 on 12th February 2021. Under Section 14 of the Act of 2002, it is only a secured creditor who can invoke the jurisdiction in that regard.

Thus, a “secured creditor” means a “financial institution”, as defined by Section 2(1)(m)(iv) of the Act of 2002, which would thus require such financial institution to satisfy the requirements of the Notification dated 24th February 2020. As per the affidavit-in-reply filed by the Reserve Bank of India, the asset size of the 3rd respondent as on 31st March 2024 was Rs.16.30 crores which is less than the amount of Rs.100 crores as indicated in the Notification dated 24th February 2020. This would indicate that though a 3rd respondent has been issued a license by the Reserve Bank

of India to operate as a Non-Banking Financial Company vide Certificate of Registration dated 23rd February 2017, it does not answer the description of Section 2(1)(m)(iv) of the Act of 2002 as its worth of assets is less than Rs.100 crores. Thus, for the purposes of the Act of 2002, the 3rd respondent is not a financial institution and hence it cannot be a secured creditor so as to invoke the provisions of Section 14 of the Act of 2002.

7. It was urged on behalf of the 3rd respondent that since the loan agreement between the parties was entered into on 10th October 2017, the Notification dated 24th February 2020 cannot be given any retrospective effect so as to prevent the 3rd respondent from invoking the provisions of the Act of 2002. We do not find that there is any question of the Notification dated 24th February 2020 being given any retrospective effect. What is required to be seen is whether the 3rd respondent qualifies as a "financial institution" for the purposes of the Act of 2002 on the date when it invoked the jurisdiction of the Court of the Chief Metropolitan Magistrate on 29th April 2024 seeking adjudication of the application filed under Section 14 of the Act of 2002. Its status on the date of filing of the proceedings under Section 14 of the Act of 2002 is required to be seen for considering whether it is entitled to do so. Hence, this contention raised on behalf of the 3rd respondent cannot be accepted. The decisions relied

upon by the learned counsel for the 3rd respondent do not assist its case in this regard.

8. For aforesaid reasons, we find that as the 3rd respondent is not shown to be a "financial institution" for the purposes of invoking the provisions of Section 14 of the Act of 2002, the application filed on its behalf before the Chief Metropolitan Magistrate cannot be adjudicated on merits. A case therefore has been made out for a writ of Prohibition to be issued. Accordingly, a writ of Prohibition shall issue to prevent the Court of the learned Chief Metropolitan Magistrate, Mumbai from proceeding and deciding Securitization Case No.598 of 2024 *(M.J. Shah Capital Pvt. Ltd. Vs. Pyramid Developers and Ors.)*. This adjudication however would not preclude the 3rd respondent from enforcing its legal rights for recovering its dues from the Partnership Firm in accordance with law.

9. Rule is made absolute in aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**