IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11618 OF 2025

Mariyam Rangwala and another … Petitioners

vs.

State of Maharashtra, Thr. Registrar, CMM & ors. … Respondents

Mr. Shadab Jan a/w. Mr. Pranay Patil, i/b. Mr. Shreyas Deshpande for petitioners.

Ms. G. R. Raghuwanshi, AGP for respondent No.1 – State.

Mr. Charles D'souza a/w. Mr. Aayush Kothari, Mr. Rupak Sawangikar and Mr.Nikhil Rajani, i/b. M/s. V. Deshpande & Co. for respondent No.2.

Mr. Navin Arora, i/b. Sagar & Sagar Law Officers for respondent No.3.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.
Reserved on : 09th JUNE, 2026
Pronounced on : 30th JUNE, 2026

Judgment (*Per Manish Pitale, J.)* :

. On 20.08.2025, the petitioners found themselves physically thrown out of flat bearing No.202 located at plot No.5, New Jamali Co-operative Housing Society Limited, Saifee Park, Church Road, Andheri (East), Mumbai – 400059 (hereinafter referred to as the said flat), which had been their residence for eight long years, at the behest of respondent No.2 – Saraswat Co-operative Bank Ltd. (hereinafter referred to as the respondent – Saraswat Bank), despite having purchased the said flat in an auction sale conducted by respondent No.3 – State Bank of India (hereinafter referred to as the respondent – SBI), way back in the year 2017, wherein the petitioners had paid their hard-earned money as bid amount and consideration for the said flat. The sudden turn of events, whereby

the petitioners found themselves thrown out of the said flat, propelled them to invoke writ jurisdiction of this Court by filing the present petition. On 04.09.2025, a Division Bench of this Court, while issuing notice in this petition, granted limited ad-interim relief in the form of a direction to the respondent – Saraswat Bank not to alienate the said flat. The ad-interim order has continued to operate during the pendency of this petition.

2. The original owner and title-holder of the said flat took credit facilities from both respondent – Saraswat Bank and respondent – SBI, by providing the very same flat as security. The competing claims of the aforesaid respondents – banks and assertion thereof, has resulted in the drastic consequence of the petitioners finding themselves thrown out of the said flat, which they had called their home, after eight years of peaceful residence therein. It would be appropriate to appreciate the chronology of events that led to filing of the present writ petition.

3. On 06.12.1985, the original borrower purchased the aforesaid flat by way of a registered document. On 22.07.1989, the co-operative housing society wherein the flat is located, issued share certificate in favour of the borrower. In the year 2004, a proprietorship of the borrower i.e. Hi Tech Polyplast Industries availed various credit facilities from the respondent – SBI to the tune of ₹ 3,23,60,000/-. In that context, on 25.09.2004, a mortgage was created by the borrower by depositing documents with respondent – SBI as title deeds of the said flat. The aforesaid security interest was admittedly registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) on 21.03.2012.

4. On 02.02.2012, respondent – Saraswat Bank sanctioned an overdraft facility of ₹ 25,00,000/- to the borrower. On the same day, the said co-operative housing society issued a letter to the said respondent, confirming that the borrower was a member of the society and that it had no objection to the flat being mortgaged, further stating that there was no encumbrance, charge or liability on the said flat. On 09.03.2012, the borrower deposited documents with the said respondent as title deeds of the said flat. On this basis, on 21.05.2012, the said respondent sanctioned cash credit facility of ₹ 50,00,000/- to the borrower as proprietor of M/s. M. K. Enterprises.

5. On 07.01.2013, the respondent – Saraswat Bank issued notice to the borrower under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act), calling upon the borrower to pay outstanding amount of ₹ 52,53,698.42, after having classified the loan account of the borrower as non-perfoming asset (NPA) with effect from 31.12.2012. On 12.04.2013, the respondent – Saraswat Bank took symbolic possession of the said flat under Section 13(4) of the Securitisation Act. After having taken symbolic possession, the admitted position is that till January 2025, in a time period of about twelve years, the said respondent did not take any further precipitate step in the matter.

6. On 16.05.2013, the respondent – SBI issued notice under Section 13(2) of the Securitisation Act, calling upon the borrower to pay the outstanding amount of ₹ 3,40,85,297.04, after having classified the loan account as NPA. This was shown as the amount

due as on 16.05.2013. On 17.12.2013, the respondent – SBI took symbolic possession of the said flat under Section 13(4) of the Securitisation Act and promptly took further action in the matter, by approaching the competent Magistrate under Section 14 of the Securitisation Act for taking physical possession of the said flat, being the secured asset. On 09.07.2014, the competent Magistrate issued an order, directing physical possession of the said flat being taken. Accordingly, on 29.11.2014, the respondent – SBI took physical possession of the said flat.

7. The respondent – SBI issued an e-auction sale notice on 'as is where is' and 'as is what is' basis regarding the said flat, specifying that the e-auction would be conducted on 28.04.2017. In the said auction, the petitioners' bid was accepted and consequently, on 09.08.2017, sale certificate was issued and registered in favour of the petitioners, showing the consideration amount as ₹ 66,45,000/-. The petitioners took physical possession of the said flat and shifted into the same. The petitioners started residing in the same with their family members, till they were unceremoniously thrown out of the said flat in August 2025 i.e. after a long period of eight years.

8. The run-up to the said drastic action was an application moved by the respondent – Saraswat Bank before the competent Magistrate in the year 2024, purportedly in pursuance of the action of symbolic possession having been taken more than eleven years ago. The competent Magistrate passed an order on 17.01.2025, at the behest of the said respondent, treating the said flat as the secured asset and directed that physical possession of the said flat be handed over to the said respondent.

9. In pursuance thereof, on 20.08.2025, with the assistance of police, the Court Commissioner physically threw out the petitioners and their family members from the said flat. The petitioners relied upon the registered sale certificate issued in their favour and also, the fact that they were successful bidders in the auction sale conducted as far back as in April 2017. They claimed to be the owners of the flat in accordance with law, but none of their objections and pleas were considered, when the Court Commissioner executed the order dated 17.01.2025 passed by the competent Magistrate at the behest of respondent – Saraswat Bank. The flat was sealed, with the personal belongings of the petitioners and their family members lying inside and in this situation, the petitioners were constrained to knock the doors of this Court, invoking writ jurisdiction.

10. The petitioners have prayed for a direction to respondent – Saraswat Bank to return physical possession of the said flat to the petitioners and a further direction to restrain the said respondent from conducting any auction sale of the said flat, apart from praying for imposition of costs on the said respondent. As noted hereinabove, by order dated 04.09.2025, the Division Bench of this Court granted limited ad-interim relief by restraining the said respondent from alienating the flat in question. The said ad-interim order has continued to operate during the pendency of this petition. The pleadings in the writ petition were completed and thereupon, the same was taken up for hearing and disposal.

11. Mr. Jan, learned counsel appearing for the petitioners submitted that the action undertaken at the behest of the respondent – Saraswat Bank physically dispossessing the petitioners, was wholly

unjustified and it cannot be supported by any legal proposition. It was emphasized that the petitioners, being successful auction purchasers and holding registered sale certificate in their favour in respect of the subject flat, are the owners and title-holders, who could not have been unceremoniously thrown out at the behest of the said respondent, purportedly exercising its rights by treating the said flat as a secured asset.

12. The learned counsel for the petitioners placed reliance on Section 13(6) of the Securitisation Act, to contend that once the said flat, as the secured asset of the respondent – SBI, had been physically taken over by the said respondent, in pursuance of steps taken under the provisions of Securitisation Act, the said flat vested in the said respondent with all rights therein, as if the transfer had been made by the owner of the said flat i.e. the original borrower. The petitioners having purchased the same in the auction sale conducted as per the provisions of Securitisation Act, became the owners of the said flat and the respondent – Saraswat Bank could not have proceeded against the petitioners in the aforesaid manner.

13. By referring to the chronology of events, it was submitted that the charge of respondent – SBI was admittedly created much prior to the credit facilities advanced by the respondent – Saraswat Bank to the borrower. Much emphasis was placed on the fact that the security interest of the respondent – SBI in the said flat, created as far back as on 24.09.2024, was registered with CERSAI on 21.03.2012. The respondent – Saraswat Bank extended credit facilities on the very same asset to the borrower, at its own risk and subject to the charge of respondent – SBI. It was submitted that even if the contention raised on behalf of the respondent – Saraswat Bank that the original

title deeds were in its custody, was to be taken into consideration, at worst, it could be said to be a situation of the charge/claim of the respondent – SBI being postponed under Section 78 of the Transfer of Property Act, 1882.

14. It was submitted that the respondent – Saraswat Bank cannot claim that mortgage was not created at all in favour of respondent – SBI in the facts and circumstances of the present case, as it was clearly a case of equitable mortgage being created in favour of the said respondent, in terms of position of law clarified by the Supreme Court in the case of *The Cosmos Co-operative Bank Ltd. vs. Central Bank of India and others*, (**2025 SCC OnLine SC 352**). By relying upon the discussion in the said judgment as regards the concept of equitable mortgage, it was submitted that the respondent – Saraswat Bank, at best, could raise a competing claim against the respondent – SBI and that the dispute between them ought to be settled as per law, without adversely affecting the interest of the petitioners, particularly when they have a registered sale certificate in their favour in respect of the subject flat.

15. Reliance was placed on judgment of the Supreme Court in the case of *Bank of India vs. Sri Nangli Rice Mills Private Limited and others*, **(2025) 9 SCC 225**, to contend that in such a situation, when two secured creditors/banks were raising competing claims in respect of the very same secured asset, the only manner in which such a dispute could be resolved, was by recourse to arbitration between the two, as mandated under Section 11 of the Securitisation Act. It was submitted that in such an *inter se* dispute of competing claims between the respondents – banks, the petitioners, who are *bona fide* purchasers for value, cannot be harassed and made to suffer.

16. The learned counsel for the petitioners also referred to the judgment of the Supreme Court in the case of *Central Bank of India and another vs. Smt. Prabha Jain and others*, **(2025) 4 SCC 38**, to contend that the object of the Securitisation Act is to provide speedy mechanism for recovery of dues to banks and financial institutions and that the tribunals constituted therein, do not have jurisdiction to decide the questions of title and to declare a sale deed or a mortgage deed as illegal. The jurisdiction to do so would remain with the Civil Court. It was submitted that the Debts Recovery Tribunal (DRT) is a creature of statute and the jurisdiction thereof is limited to testing the validity of measures taken under the provisions of the Securitisation Act.

17. It was submitted that respondent – Saraswat Bank cannot insist that the petitioners should knock the doors of the DRT, by invoking Section 17 of the Securitisation Act, simply for the reason that the petitioners have obtained valid title on the basis of the registered sale certificate issued as a consequence of an auction sale conducted under the provisions of the very same Securitisation Act. The questions pertaining to the validity of petitioners' title and legality of mortgage in favour of respondent – SBI, are questions that the DRT cannot examine.

18. By placing reliance on a judgment of Division Bench of this Court in the case of *Indian Overseas Bank vs. Deputy Commissioner of State Tax and others*, **2024 SCC OnLine Bom 907**, it was further submitted on behalf of the petitioners that once action has been taken under the provisions of Securitisation Act in the context of a secured asset and it is sold by way of auction, the process is

exhausted and the said secured asset is no longer available for satisfying the claims of other creditors. On this basis, it was submitted that the respondent – Saraswat Bank could not have proceeded under Section 14 of the Securitisation Act.

19. It was emphasized that the respondent – Saraswat Bank went into a slumber, after having invoked Section 13(4) of the Securitisation Act, way back on 12.04.2013 and rose from its slumber after eleven years, by approaching the competent Magistrate in the year 2024, culminating in the order dated 17.01.2025 passed by the said Magistrate. In the meanwhile, the respondent – SBI had already completed its entire action in respect of the said flat as the secured asset, as a consequence of which the petitioners had entered into possession. This demonstrates the absolute unsustainability of the actions undertaken by the respondent – Saraswat Bank.

20. The learned counsel for the petitioners was at pains to point out the human suffering and tragedy suffered by the petitioners due to the illegal and unsustainable actions of respondent – Saraswat Bank. It was submitted that in the backdrop of *inter se* disputes and competing claims of the respondents – banks, the petitioners cannot be made to suffer with respect to the subject flat. The concern of the said banks was and is only about recovery of their dues. The respondent – SBI having proceeded to complete its actions, still holds the amount recovered from such procedure and respondent – Saraswat Bank can invoke arbitration under Section 11 of the Securitisation Act. In such circumstances, the writ petition ought to be allowed, so that the petitioners are put back in possession of the subject flat, in respect of which they hold a valid title.

21. On the other hand, Mr. D'souza, learned counsel appearing for contesting respondent – Saraswat Bank submitted that the only remedy available to the petitioners, in the facts and circumstances of the present case, was to approach the DRT under Section 17 of the Securitisation Act. In the face of such alternative efficacious statutory remedy available to the petitioners, the present petition ought not be entertained and that it deserves to be dismissed only on this ground. The learned counsel placed reliance on the judgments of the Supreme Court in the cases of *United Bank of India vs. Satyawati Tondon and others*, **(2010) 8 SCC 110** and *Celir LLP vs. Bafna Motors (Mumbai) Private Limited and others*, (**2024) 2 SCC 1**, as also judgment of this Court in the case of *Crosscraft Private Ltd. vs. Authorized Officer, Madgaum Urban Co-op. Bank Ltd. and others*, **2019 SCC OnLine Bom 279**.

22. The learned counsel for respondent – Saraswat Bank further submitted that in the present case, the most crucial fact is that the original title deeds and documents pertaining to the subject flat, are in the custody of the said respondent. This fact completely answers all the contentions sought to be raised on behalf of petitioners. It was submitted that respondent – SBI treated colour photocopies of the original title deeds and documents, as documents sufficient for advancing credit facilities to the borrower. Such a procedure cannot create even an equitable mortgage in favour of the respondent – SBI. Consequently, all the subsequent actions taken by the said respondent, purportedly under the Securitisation Act, are rendered *ex facie* illegal and hence, unsustainable. Consequently, the petitioners can also not claim any title or ownership in the subject flat.

23. It was submitted that, whether the said process did or did not create a mortgage in favour of the respondent – SBI, is a factual enquiry that cannot be gone into in writ jurisdiction. By placing reliance on the judgment of the Supreme Court in the case of *K. J. Nathan vs. S. V. Maruthi Rao and others*, 1964 SCC OnLine SC 120, it was submitted that such a question was necessarily a mixed question of fact and law, which could certainly not be decided in writ jurisdiction. The Securitisation Act has created tribunals for such determination and therefore, the petitioners ought to have invoked Section 17 of the Securitisation Act, by approaching the DRT for redressal of their grievance.

24. It was further submitted that since there was no mortgage created in the eyes of law in favour of respondent – SBI and the original title deeds were not in possession of the said respondent, it could not have conferred a better title on the petitioners. On this basis, it was submitted that even if the petitioners have a registered sale certificate in their favour, the inherent defect completely vitiated the said document, thereby indicating that the petitioners do not possess any title in law and hence, they cannot claim any right of possession in the said flat. Reliance was placed on the judgment of the Supreme Court in the case of *Stressed Assets Stabilization Fund vs. West Bengal Small Industries Development Corporation Limited and another,* (2019) 10 SCC 148 and judgment of Karnataka High Court in the case of *Smt. Sukanya vs. Canara Bank and others,* (2003) 115 Comp Cas 698.

25. It was further submitted that the respondent – SBI was itself to blame for its failure to ensure that the original title deeds were deposited when the mortgage was created. Such an act on the part of

the said respondent clearly demonstrated that neither could the said respondent nor could the petitioners raise any challenge to the actions undertaken by the respondent – Saraswat Bank under the provisions of the Securitisation Act, since the original title deeds were deposited with respondent – Saraswat Bank, on the basis of which valid mortgage existed in its favour. This could also not be said to be a case covered under Section 78 of the Transfer of Property Act, for the reason that no charge was created in favour of respondent – SBI, in the facts and circumstances of the present case. In this context, reliance was placed on judgment of this Court in the case of *Asset Reconstruction Company (India) Limited vs. Punjab National Bank and another,* **2025 SCC OnLine Bom 1410** and judgment of Madras High Court in the case of *Indian Bank vs. Punjab National Bank,* **2009 SCC OnLine Mad 1150**.

26. On this basis, it was further submitted that there is no substance in the claim that the present case involves a dispute regarding priorities between the two banks. As per law, only respondent – Saraswat Bank was entitled to invoke provisions of the Securitisation Act to proceed against the secured asset i.e. the flat in question and therefore, there was no question of taking recourse to Section 11 thereof. It was submitted that the entire action undertaken by respondent – SBI was void and hence, the petitioners could also not claim any valid right, title or interest in the subject flat. The admitted position on facts clearly shows that if at all a dispute was to be raised, it was for the petitioners to approach the DRT under Section 17 of the Securitisation Act. The respondent – Saraswat Bank, having proceeded in accordance with law under the provisions of the Securitisation Act, cannot be relegated to the civil Court or to arbitration under Section 11 thereof. On this basis, the

learned counsel for respondent – Saraswat Bank sought to distinguish the judgments upon which the petitioners placed reliance i.e. **Central Bank of India and another vs. Smt. Prabha Jain and others** (*supra*), **The Cosmos Co-operative Bank Ltd. vs. Central Bank of India and others** (*supra*) and **Bank of India vs. Sri Nangli Rice Mills Private Limited and others** (*supra*).

27. The learned counsel for respondent – Saraswat Bank emphasized that the issues that really arise in the present case, pertain to the admitted position that the original title deeds are with respondent – Saraswat Bank and that no valid mortgage was ever created in favour of respondent – SBI; the original share certificate being in possession of respondent – Saraswat Bank, there was no reason for a duplicate share certificate being issued and given to the petitioners and that if arguments raised on behalf of the petitioners were to be accepted, it would give a licence to unscrupulous borrowers and creditors to conspire and oust a genuine creditor, which is entitled to invoke the provisions of Securitisation Act. This could defeat the very purpose and object of enactment of the Securitisation Act, thereby demonstrating that the present petition ought to be dismissed.

28. Mr. Arora, learned counsel appearing for respondent – SBI submitted that the petitioners were put in possession of the subject flat, pursuant to legal and valid steps taken by the said respondent, in the context of the secured asset i.e. the subject flat. The contentions raised on behalf of respondent – Saraswat Bank were opposed and it was submitted that this Court may pass appropriate orders in this writ petition.

29. Ms. Raghuwanshi, AGP appeared on behalf of respondent No.1 – State. In the facts and circumstances of the present case, the said respondent is a formal party and hence, the learned AGP submitted that this Court may pass appropriate orders in this writ petition.

30. We have considered the rival submissions. The petitioners have invoked writ jurisdiction, as they have been thrown out of the said flat, which they called their home for more than eight years and they claim to be entitled to restoration of possession. The drastic consequence faced by the petitioners has its origin in the borrower taking credit facilities from the aforesaid two banks by providing the very same flat as security. This led to parallel proceedings being undertaken by the two banks for realization of amounts due to them from the borrower. Thus, while both the banks claim to have invoked the provisions of the Securitisation Act, the only purpose for doing so was to realize the dues payable by the borrower. It is evident that the two banks raised competing claims with regard to the very same flat and in such a scenario, the petitioners are faced with such an alarming predicament, wherein they have been ousted from their own abode, despite having paid their hard earned money as consideration.

31. It would be appropriate to consider the manner in which the two banks proceeded in the matter. It is undisputed that respondent – SBI advanced credit facilities to the borrower as far back as in the year 2004 and that a mortgage was created in its favour on 25.09.2004. The said mortgage/security interest was registered with CERSAI on 21.03.2012. Although, the aforesaid fact of registration of the security interest in favour of respondent – SBI, may not be the

sole factor in its favour vis-a-vis the claims raised by respondent – Saraswat Bank, nevertheless it is a very significant fact. The respondent – Saraswat Bank sanctioned credit facilities to the borrower in the year 2012 i.e. about eight years after the respondent – SBI had advanced credit facilities and the mortgage was created in its favour.

32. The admitted position on facts also shows that it was respondent – Saraswat Bank that initiated steps under the provisions of the Securitisation Act in January 2013 and also took symbolic possession of the subject flat on 12.04.2013. Thereafter, on 16.05.2013, respondent – SBI invoked Section 13(2) of the Securitisation Act for amounts due and payable. It is significant to note that the respondent – SBI also took symbolic possession of the subject flat on 17.12.2013. It is at this point in time that further steps taken by the two banks, followed divergent paths. While respondent – SBI moved with alacrity and approached the competent Magistrate under Section 14 of the Securitisation Act immediately in the year 2014 and an order dated 09.07.2014 was passed by the Magistrate in its favour for taking physical possession of the subject flat, respondent – Saraswat Bank went into deep slumber. In pursuance of the order passed by the Magistrate, respondent – SBI took physical possession of the subject flat on 29.11.2014, issued sale notice in April 2017 and conducted auction sale on 28.04.2017. The petitioners were the successful bidders and they bid the amount of ₹ 66,45,000/-. On 09.08.2017, sale certificate was issued and registered in their favour. The petitioners took physical possession of the said flat and started living there with their family members. Till date, there is no challenge to the registered sale certificate issued in their favour.

33. About eleven years after the respondent – Saraswat Bank had taken symbolic possession of the subject flat under Section 13(4) of the Securitisation Act in the year 2024, the said respondent, for the first time, approached the Magistrate under Section 14 of the Securitisation Act, for taking physical possession of the subject flat. The Magistrate passed order on 17.01.2025 and on the basis of the said order, respondent – Saraswat Bank physically dispossessed the petitioners and their family members from the subject flat on 20.08.2025. We find that the respondent – Saraswat Bank has miserably failed to explain its deep slumber with regard to taking further logical action under the provisions of the Securitisation Act, having taken symbolic possession of the subject flat as far back as on 12.04.2013. The said respondent chose to rise from its slumber after about eleven years at its own peril, because during the interregnum and ten years prior to the said respondent rising from its slumber, respondent – SBI was already granted an order under Section 14 by the Competent Magistrate, which was executed in the year 2017 and further action of conducting auction sale was undertaken, leading to the petitioners obtaining registered sale certificate and physical possession in the subject flat.

34. In these circumstances, we find substance in the contentions raised on behalf of the petitioners, by placing reliance on judgment of this Court in the case of **Indian Overseas Bank vs. Deputy Commissioner of State Tax and others** (*supra*). In the said case, this Court rejected the contention that a creditor or a claimant seeking recovery can chase the very same secured asset in the hands of a purchaser after the purchaser had come into picture in pursuance of sale conducted under the provisions of the Securitisation Act. While dealing with such a submission, this Court held in the said judgment as follows:

> *"35. As a last ditch-effort, Mrs. Vyas presented us with a unique proposition. It was her contention that notwithstanding the fact that the secured creditor has the first charge and priority for recovery of dues from the sale of the secured asset, the MVAT Authorities can once again chase the very same asset in the hands of the purchaser and put it up for sale towards recovery of their dues.*
>
> *36. Such a proposition has only to be stated to be rejected. The creation of the mortgage over the asset would mean that the charge is over the asset. Once the security interest is enforced, the asset would no longer be available for further enforcement. The proposition canvassed by Mrs. Vyas would render Section 26-E meaningless, because if that were the legal position, the creation of priority in favour of the secured creditor would have no meaning. Put differently, according to the proposition suggested, the secured creditor would first enforce its charge against the asset and thereafter the MVAT Authorities would yet again enforce their charge against the very same asset to recover their dues. Thereafter if there are other security interests with an inferior priority, every single beneficiary of every such security interest would keep enforcing their security interest against the very same asset. Such an absurd proposition turns on its head, the very meaning of having a security interest over an asset in priority over others. Needless to say, no person in his right mind would ever bid for an asset against which enforcement of multiple charges is contemplated. This because he would have to face the endless queue of subsequent enforcement actions against the very same asset. To underline the absurdity, for example, if the secured asset were being sold when its market value is Rs. 5 Crores and the dues of the MVAT Authorities are Rs. 10 Crores, a potential purchaser of the property would effectively have to be ready to pay Rs. 15 Crores for the property worth Rs. 5 Crores. This would indeed be absurd to say the least. We therefore have no hesitation in rejecting this argument canvassed by Mrs. Vyas."*

35. Thus, it is clear that once the security interest in the present case i.e. the subject flat was dealt with and respondent – SBI had enforced its security interest, the said flat was no longer available for further enforcement by respondent – Saraswat Bank. The absurdity

of respondent – Saraswat Bank's claim that it was entitled to proceed further in respect of the subject flat, is evident and in the light of the abovenoted position of law, the said claim deserves to be rejected. We find that the fact that security interest of respondent – SBI was created way back in the year 2004 and also registered in the year 2012 with CERSAI, must inure to the benefit of the petitioners, coupled with the fact that respondent – Saraswat Bank chose to suspend its own action in respect of the subject flat, after having invoked Section 13(4) of the Securitisation Act in the year 2013. The auction undertaken by respondent – SBI in respect of the subject flat, clearly exhausted the said flat from being treated as a security interest or a secured asset and thereupon, respondent – Saraswat Bank could, at best, raise a dispute with respondent – SBI in respect of its claim. After all, the only claim and interest of respondent – Saraswat Bank pertains to its alleged dues against the borrower.

36. In this context, Section 13(6) and (7) of the Securitisation Act are relevant and it reads as follows:

> *"13. Enforcement of security interest –*
>
> *(1) to (5) *************
>
> *(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.*
>
> *(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held*

by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests."

37. As per sub-section (6) of Section 13 of the Securitisation Act quoted hereinabove, once the secured asset i.e. the subject flat in this case stood transferred, all rights therein stood transferred in favour of the petitioners, as if the transfer had been made by the original owner of the flat i.e. the borrower. This is significant as the petitioners are the transferees and the sale certificate issued in their favour has been registered.

38. Sub-section (7) of the Section 13 of the Securitisation Act quoted hereinabove stipulates that a secured creditor like the respondent – SBI herein holds the amount received in pursuance of an auction sale conducted under the provisions of the Securitisation Act, in trust, to be applied in the manner provided under the said provision. Thus, even if respondent – Saraswat Bank claims a superior charge or claim over the proceeds of auction sale, it is necessarily a dispute between it and respondent – SBI, which needs to be resolved under the provisions of the Securitisation Act. The petitioners cannot be made to suffer due to the dispute between the aforesaid two banks.

39. In this context, Section 11 of the Securitisation Act assumes significance and it reads as follows:

*"11. **Resolution of disputes.**—Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or asset reconstruction company or qualified buyer, such dispute shall*

> *be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly."*

40. The Supreme Court, in the case of **Bank of India vs. Sri Nangli Rice Mills Private Limited and others** (*supra*), had an occasion to consider the above quoted Section 11 of the Securitisation Act. After referring to a number of judgments in that context, the Supreme Court held that the said provision is mandatory, when such a dispute arises between two banks or financial institutions, with regard to recovery of their dues in the context of the very same secured asset. It was held that even though there may not be a written agreement between such banks or financial institutions for resolution of their disputes through arbitration, there is a deemed agreement under Section 11 of the Securitisation Act and hence, the dispute needs to be resolved only through arbitration. The relevant portions of the judgment of the Supreme Court in the case of **Bank of India vs. Sri Nangli Rice Mills Private Limited and others** (*supra*), read as follows:

> *"68. From the plain language of Section 11 of the SARFAESI Act, it is manifest that the scope and ambit of the said provision have been limited or confined by the twin conditions laid therein, that have to be satisfied in order to attract the said provision being as under:*
>
> *68.1. Where the dispute arises between:*
> *(a) any bank;*
> *(b) any financial institution;*
> *(c) any asset reconstruction company;*
> *(d) any qualified buyer; and*
>
> *68.2. Where the dispute relates to:*
> *(a) securitisation of financial assets;*
> *(b) reconstruction of assets;*
> *(c) non-payment of any amount due and/or interest*

69. The object underlying Section 11 of the SARFAESI Act insofar as it mandates arbitration or conciliation as the only mechanism for resolution of disputes between a bank, financial institution, ARC, etc. and ousts the jurisdiction of DRTs under Section 17 for adjudicating such disputes is to ensure that ancillary or collateral disputes that may arise between competing secured creditors do not hinder the larger purpose of the SARFAESI Act of facilitating recoveries of dues from the borrowers expeditiously by enforcement of secured assets or other means provided thereunder. It is to ensure that discord among secured creditors should not impede, derail, or stall the recovery proceedings under the SARFAESI Act, which are designed with the idea of time-bound adjudication with minimal interference.

70. In the absence of any such mandate as enshrined in Section 11 of the SARFAESI Act, every conflict between secured creditors over a security interest would ultimately just prolong the recovery proceedings against the borrower and thwart any possibility of a meaningful recovery of bad debts. By requiring such disputes to be referred to arbitration, the legislature has effectively sought to avoid a situation where squabbles between secured creditors obstruct or delay the realisation of the value of the secured assets. Both the RDBFI Act and the SARFAESI Act envision DRTs and DRAT as specialised forum for or facilitating and effectuating recovery against defaulting borrowers, and not for resolving disputes inter se secured creditors. Their jurisdiction is primarily directed towards the adjudication of recovery certificates, enforcement of security interest, and addressing borrower objections under Section 17. The nature of proceedings before DRT is largely summary, intended to enthuse efficiency in recovery of dues and save such proceedings from the perils of pendency. This is the very reason why the legislature consciously omitted the term "borrower" in Section 11 of the SARFAESI Act.

*71. to 81. *************

82. A situation of "non-payment of any amount" or an overdue arises when one party fails to fulfil their obligation to pay the party they are indebted to. For the purposes of the present case at hand, we will be focussing on the scope of Section 11 of the SARFAESI Act specifically in the context of disputes between two banks, excluding financial institutions,

asset reconstruction companies (ARCs), or qualified buyers, as otherwise contemplated under the provision. In cases, involving two banks acting as creditors, a dispute may not arise directly between the banks due to the "non-payment of any amount" they owe to each other. Instead, disputes typically emerge because of the borrower's failure to discharge their debt obligations. For instance, if a borrower defaults on repayment after availing of credit facilities extended by two banks, issues of non-payment of loan amounts (including interest) owed by the borrower, the same may lead to a dispute. Such a dispute is likely to concern the priority of charges over the borrower's assets, especially in situations where the borrower has secured loans from both banks by mortgaging the same property. In the present case, the question of priority arises due to the simultaneous loans extended by the appellant and the respondent Banks and the creation of charges over the same security.

83. In cases such as the present one, the authority to determine which bank holds the prior charge over the borrower's assets becomes a significant issue for consideration. There have been instances where such disputes have been referred to DRT or civil courts for adjudication. The question of determining the priority of charge typically arises after the borrower defaults on their obligations and their assets are classified as NPAs. In such scenarios, two or more banks may assert competing claims over the same secured asset.

84. The dispute stems from the borrower's failure to discharge their debt obligations, including the amounts they were bound to pay to the banks. This non-payment gives rise to a conflict between the creditors regarding the hierarchy of their respective charges over the borrower's assets. Consequently, the issue of priority of charge is inherently and intrinsically linked to the borrower's "non-payment of any amount due" as contemplated under Section 11 of the SARFAESI Act. This provision, therefore, would undoubtedly bring such disputes within its ambit, and thereby mandate resolution of such disputes through conciliation or arbitration as prescribed under the 1996 Act.

85. It is imperative to carefully examine the bare text of Section 11 of the SARFAESI Act. The said provision does not

stipulate that the "amount due" must be owed directly between the two banks, financial institutions, ARCs, etc. The language of the provision is clear and discernible: "Where any dispute relating to […] non-payment of any amount due, including interest, arises amongst any […]". The broad phrasing of the aforesaid expression signifies a wide import of its meaning which would include a various range of scenarios where disputes are connected to unpaid amounts, including those arising due to third-party defaults, such as indirect defaults of the borrowers.

*86. to 88. *************

89. However, a closer look would reveal that the dispute in substance is not merely concerned with whether the rights of either the appellant or the respondent Banks are enforceable by virtue of the manner in which they have been created. Rather, the dispute pertains to the priority of charge between two banks than the mode of its creation. The contention that the charge, being created by way of pledge, falls outside the ambit of the Act under Section 31(b) is misplaced. This is because the exclusion under Section 31(b) applies to disputes between the borrower and the lender concerning the pledge of movables, where such dispute is purely in regard to enforcement of such right qua the borrower. However, the present dispute between the appellant and the respondent Banks is regarding their respective rights over the stocks. The manner in which the charge was created, be it by pledge or hypothecation, is irrelevant to the determination of priority between the two Banks. The said issue will only assume importance, once the rights of each of the Banks are crystallised, and thereafter enforcement of security on the strength of such rights is sought. Hence, the present case falls under the ambit of Section 11 of the SARFAESI Act.

*90. to 94. *************

95. We have already clarified that a dispute relating to the "non-payment of any amount due, including interest" may arise following a default in loan repayment by a common borrower. Such default can indirectly lead to a conflict between two banks that have extended loans to the same borrower. This type of dispute falls within the ambit of Section 11 of the SARFAESI Act, as it involves competing

claims over the recovery of dues. Hence, Section 11 of the SARFAESI Act does include borrowed loan amount under the "non-payment of any amount due including interest". However, when a lender assumes the role of a borrower, the legal relationship between the parties undergoes a shift. In such circumstances, the entity that typically extends credit now becomes obligated to fulfil the borrowed amount as per the contractual arrangements between the bank and the lender-turned-borrower. This changes the traditional lender-borrower relationship, requiring the lender-turned-borrower to adhere to the same obligations that may in the usual circumstances apply to any other borrower.

*96. to 111. *************

112. We are of the considered view that there is a "deemed agreement" between the parties specified in Section 11 of the SARFAESI Act, insofar as the dispute relates to the matters so mentioned and is between the parties so specified thereunder. Thus, there is no need for an explicit written agreement between the parties. Section 11 of the SARFAESI Act creates a legal fiction by using the word "as if", which presumes the existence of an arbitration agreement among the designated parties, namely, a bank or financial institution or asset reconstruction company or qualified buyer. This provision negates the requirement for a formal written arbitration agreement, as it assumes consent for arbitration or conciliation concerning disputes related to securitisation, reconstruction, or non-payment of amount due, including interest. The term "as if" must be given a meaningful effect, whereby the parties are to be treated as if they had willingly provided written consent. Consequently, the legal presumption under Section 11 of the SARFAESI Act exists independently of a formal arbitration agreement."

41. We have extensively quoted from the said judgment of the Supreme Court, for the reason that in the present case, the real dispute is between the two respondents – banks and this needs to be resolved by recourse to Section 11 of the Securitisation Act. Even if, respondent – Saraswat Bank claims that it has priority over the claim of respondent – SBI, the same needs to be resolved by way of arbitration under the said provision. As noted hereinabove, once

respondent – SBI completed the entire procedure and action of dealing with the subject flat under the provisions of the Securitisation Act, the said security interest stood exhausted and there was no question of respondent – Saraswat Bank taking recourse to Section 14 of the Securitisation Act once again in respect of the subject flat and that too twelve years after having initiated action under Section 13(4) of the Securitisation Act. Since the respondent – Saraswat Bank could not have proceeded in respect of the subject flat, by taking recourse to Section 14 of the Securitisation Act, it cannot be said that the petitioners had the remedy to approach the DRT to challenge the action of the said respondent.

42. As a matter of fact, when the petitioners resisted the action of respondent – Saraswat Bank in taking physical possession of the subject flat by relying upon registered sale certificate issued in their favour, the said respondent ought not to have proceeded further and the only recourse was to have invoked Section 11 of the Securitisation Act. Instead, the said respondent proceeded to physically dispossess the petitioners from their home along with their family members, obviously causing untold misery to them. In this situation, the petitioners were fully justified in knocking the doors of this writ Court by filing the instant petition. As noted hereinabove, this Court granted interim relief to the petitioners by restraining the said respondent in further dealing with the subject flat. We are of the opinion that in view of the observations made hereinabove, the respondent – Saraswat Bank is not justified in relying upon the judgments of the Supreme Court in the cased of **United Bank of India vs. Satyawati Tondon and others** (*supra*) and **Celir LLP vs. Bafna Motors (Mumbai) Private Limited and others** (*supra*), as also judgment of this Court in the case of **Crosscraft Private Ltd. vs.**

Authorized Officer, Madgaum Urban Co-op. Bank Ltd. and others (*supra*). The present case is distinguishable on facts, even if the position of law indicates that 'any person' aggrieved by action taken under the Securitisation Act, ought to approach the DRT for redressal of grievance. Since we have held that invocation of Section 14 of the Securitisation Act, on the part of respondent – Saraswat Bank eleven years after taking recourse to Section 13(4) thereof and in the interregnum, the security interest itself having been exhausted, rendered such action completely without authority of law and hence, the petitioners were not obliged to approach the DRT as an alternative remedy. The contentions raised on behalf of the respondent – Saraswat Bank in that context on the maintainability of this petition, are rejected.

43. During the course of arguments, reference was made on behalf of petitioners to the judgment of the Supreme Court in the case of **The Cosmos Co-operative Bank Ltd. vs. Central Bank of India and others** (*supra*), in the context of the question as to what could be said to be an equitable mortgage. A proper reading of the said judgment shows that a Court of conscience has to give effect to the intention of parties in the form of an equitable mortgage, even when there is no formal agreement or a shred of document or if the documents deposited do not necessarily have the effect of transferring or conveying any title or interest in the subject property. The Supreme Court also referred to situations where equitable mortgages are created on the basis of deposit of part-deeds or documents purporting title or evincing intention of parties to create an interest. In that context, reference has been made in the said judgment to Section 78 of the Transfer of Property Act, pertaining to postponement of prior mortgagee.

44. In the facts of the present case, we find that the claim of respondent – Saraswat Bank would clearly give rise to the question of priorities between it and respondent – SBI. This would necessarily pertain to entitlement of either of the banks to the proceeds of auction sale conducted by respondent – SBI under the Securitisation Act. Such a dispute will have to be resolved by recourse to Section 11 of Securitisation Act through arbitration. This Court is not expressing any final opinion on the rival contentions pertaining to the *inter se* priority of claims between the respondent – banks. That is a dispute which the respondent – Saraswat Bank can raise under Section 11 of Securitisation Act by recourse to arbitration. As per Section 13(7) of the Securitisation Act, respondent – SBI holds the proceeds of the auction sale for utilization as per the said provision and it holds the same in trust. Eventually, the proceeds of the auction sale may be applied and utilized on the basis of orders that may be passed, if respondent – Saraswat Bank chooses to invoke Section 11 of the Securitisation Act, taking recourse to arbitration. This Court is not expressing any opinion in that regard.

45. If respondent – Saraswat Bank is insisting upon the question of title and whether the mortgage executed in favour of respondent – SBI was legal or not, in the first place, it is diverting from the main purpose of its action i.e. for realizing its dues and in any case, such a dispute would have to be resolved by a Competent Civil Court, in terms of the position of law recognized and reiterated by the Supreme Court in the case of **Central Bank of India and another vs. Smt. Prabha Jain and others** (*supra*).

46. In the said judgment, the Supreme Court held that since the DRT is a creature of statute and its powers are bound by the statute,

it would not have jurisdiction to declare a mortgage as illegal, since the same would be within the jurisdiction of a competent Civil Court. In any case, we find that by making vigorous submissions on the question of title in the present case, respondent – Saraswat Bank is completely misdirecting itself as its only aim and purpose is to recover its dues from the borrower. As noted hereinabove, the petitioners indeed have a registered sale certificate in their favour and in absence of any challenge thereto, the said respondent, in its aforesaid misdirected submissions, is seeking to defend its action of physically throwing out the petitioners from the said flat, despite they having the said registered sale certificate along with the share certificate issued by the society in their favour.

47. We also find that the questions and issues highlighted on behalf of the respondent – Saraswat Bank in the context of its mortgage created by deposit of title deeds having higher credibility over the mortgage created in favour of respondent – SBI, as also 'duplicate share certificate' issued by the society in favour of the petitioners, are wholly misplaced, in the light of the observations made hereinabove.

48. We also find that respondent – Saraswat Bank is not justified in relying upon judgments of this Court in the case of **Asset Reconstruction Company (India) Limited vs. Punjab National Bank and another** (*supra*) and the judgment of Madras High Court in the case of **Indian Bank vs. Punjab National Bank** (*supra*). The said judgments concern negligence shown by one of the secured creditors / banks in the context of creation of mortgage. The respondent – Saraswat Bank seeks to rely upon the same to claim that the respondent – SBI was negligent in its conduct and hence, the

petitioners must also suffer the consequences. But, we are of the opinion that the said argument works against respondent – Saraswat Bank itself. As noted hereinabove, the said respondent chose to suspend its own actions under the Securitisation Act, after invoking Section 13(4) of the Securitisation Act, having gone into deep slumber for eleven years. In the interregnum, respondent – SBI proceeded with its actions under the provisions of the Securitisation Act, exhausted the security interest and the petitioners came into the picture as auction purchasers. They not only took physical possession of the subject flat, but also the registered sale certificate was issued in their favour and they were residing in the said flat for more than eight years before respondent – Saraswat Bank chose to rise from its slumber. Such conduct of the said respondent disentitles it to justify its action of physically throwing out the petitioners from the said flat. In the facts and circumstances of the present case, their claim of recovery of dues from the borrower gives rise to a dispute with respondent – SBI, which can be resolved by recourse to Section 11 of the Securitisation Act.

49. We also do not find any substance in respondent – Saraswat Bank placing reliance on the judgment of the Supreme Court in the case of **Stressed Assets Stabilization Fund vs. West Bengal Small Industries Development Corporation Limited and another** (*supra*), for the reason that questions sought to be raised by the said respondent regarding veracity of petitioners' title and as to whether the respondent – SBI could have conveyed title to the petitioners, are wholly misdirected, because the security interest itself was exhausted and in terms of the law laid down by this Court in the case of **Indian Overseas Bank vs. Deputy Commissioner of State Tax and others** (*supra*), the respondent – Saraswat Bank cannot once again proceed

to conduct sale of the subject flat for its dues. The said respondent – Saraswat Bank is at liberty to raise its claim or dispute as against respondent – SBI in accordance with law, as indicated hereinabove. For the said reasons, the respondent – Saraswat Bank is not justified in relying upon the judgment of the Karnataka High Court in the case of **Smt. Sukanya vs. Canara Bank and others** (*supra*).

50. We also find that while exercising writ jurisdiction, this Court has to ensure that the ends of justice are met. The petitioners, who are successful auction purchasers having registered sale certificate in respect of the said flat in their favour and who have been in valid and legal possession of the aforesaid flat for more than eight years, cannot be thrown on the streets, on the basis of the aforesaid action undertaken by respondent – Saraswat Bank. It would be a travesty of justice, if this Court, exercising writ jurisdiction, does not come to the aid of the petitioners, who have suffered such a drastic consequence. The petitioners and their family members were unceremoniously thrown out of the subject flat in August 2025 and the said action of respondent – Saraswat Bank hit them like a bolt from the blue. In view of the discussion hereinabove, we do not find any legal basis for the said respondent to have taken such a drastic action against the petitioners, who continue to hold rights in the subject flat.

51. We also do not find any substance in the contention raised on behalf of the respondent – Saraswat Bank that if the mortgage executed in favour of respondent – SBI is accepted, it will open the doors for unscrupulous borrowers and creditors to conspire to deprive genuine creditors of their rights protected under the Securitisation Act. We are of the opinion that each case has to be decided on its own facts and if in a given case, the Court finds that

such unscrupulous elements are seeking to mislead the Court, appropriate orders would be passed. In the facts and circumstances of the present case, even respondent – Saraswat Bank conceded that the petitioners cannot be said to have conspired with respondent – SBI, in order to deprive respondent – Saraswat Bank of its rights. As a matter of fact, the petitioners are unnecessarily found at the receiving end, when the dispute sought to be raised by respondent – Saraswat Bank really concerns its claim regarding dues recoverable from the borrower. The same can be agitated under Section 11 of the Securitisation Act, in the light of the observations made hereinabove.

52. In view of the above, the writ petition is allowed in terms of prayer clauses (b) and (c).

53. Accordingly, the petitioners shall be put back in possession of the subject flat by respondent – Saraswat Bank within four weeks from today and all their possessions shall be returned. The said respondent – Saraswat Bank is restrained from dealing with the subject flat. At the same time, liberty is reserved for the said respondent – Saraswat Bank to invoke Section 11 of the Securitisation Act, if it so chooses, to raise a dispute with respondent – SBI, in accordance with law. The rights and contentions of respondent – Saraswat Bank and respondent – SBI in that regard, are kept open.

54. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.) (MANISH PITALE, J.)