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

VASANT
ANANDRAO
IDHOL

WRIT PETITION (L) NO.34554 OF 2025

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Date: 2025.10.29
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M/s. Elite Enterprises & Anr. ... Petitioners

V/s.

Board of Directors of M/s. Religare Finvest
Limited & Ors. ...Respondents

Mr. Mathew J. Nedumpara with Ms. Hemali Kurne i/b Nedumpara &
Nedumpara for the Petitioners.

Mr. Archit Virmani with Mr. Atul Gupta for the Respondent Nos.1 to
3.

CORAM : SANDESH D. PATIL, J.
DATE : 28TH OCTOBER, 2025
(VACATION COURT)

P.C. :-

1. The Petitioners had sought production of this matter in lieu of the notice dated 22/09/2025 received by the Petitioners whereby auction sale of the property in question was to take place on 29/10/2025. The Petitioners sought stay of the auction which is to be held on 29/10/2025. The Petitioners had filed the notice dated 22/09/2025 along with the praecipe.

2. Mr. Nedumpara, the learned counsel appearing for the Petitioners relied upon the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “**MSMED Act**”) in order to buttress his contention. Mr. Nedumpara also referred to “the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises”. He relied upon clause 1(4) of the said Framework. He also placed reliance upon clause 4(14) of the said Framework.

3. Mr. Nedumpara submitted that the judgment in the matter of *M/s. Pro Knits vs. Board of Directors of Canara Bank & Ors. (2024 INSC 565)*, which is annexed by the Petitioners at Exhibit- I to the Petition is *per incuriam* and that it is not binding on the Courts and Tribunals in this country. He has specifically referred to prayer clause (b) where he has sought declaration to that effect.

4. Mr. Nedumpara further submitted that it is the duty of the banks to identify the accounts of MSME. He submitted that

before a loan account of MSME turns into non-performing asset (NPA), banks or creditors are required to identify incipient stress, in the account by creating three sub-categories under special account. He submitted that the observation of the Apex Court in the judgment of M/s. Pro Knits (supra), more particularly in paragraph 17 is contrary to the MSME Act, 2006. He states that the notification dated 29/05/2015 unmistakably declares that MSME borrower has no obligation to make an application for resolution of stress and on the contrary, Banks and Financial Institutions are duty bound to identify incipient stress based on the circular of the Reserve Bank of India dated 17/03/2016.

5. Mr. Nedumpara states that the notice which was issued by the Respondent Nos.1 to 3 itself indicates the knowledge of the Respondent Nos.1 to 3 that the Petitioner No.1 is a MSME. He further relies upon the judgment of the Kerala High Court in Writ Petition (C) No. 5466 of 2025 to buttress his contention. He also relies upon the judgment in the matter of A. K. Karthikeyan vs. The Authorised Officer (2025) SCC OnLine Mad 3785 passed

by the Madurai Bench of Madras High Court. He submits that both the judgments of the Apex Court in the matters of 'M/s. Pro Knits' (supra) and 'Shri Shri Swami Samartha Construction and Finance Solution & Anr. vs. Board of Directors of NKGSB Co-op. Bank Ltd. & Ors. (2025) SCC OnLine SC 1566' are considered by these Courts. He submits that both the High Courts have directed constitution of a committee. He therefore states that the entire exercise conducted by the Respondent No.1 is bad in law and deserves to be quashed.

6. Mr. Archit Virmani, learned counsel appearing for the Respondent Nos.1 to 3 states that the proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as '**SARFAESI Act**') are already over. He states that the possession of the assets was already taken on 15/05/2025. That action on the part of the Respondent Nos.1 to 3 was never challenged by the Petitioners. He states that the notice dated 22/09/2025 of which urgency is sought to be created was also not

challenged for more than 30 days and it is only at the fag end of the expiry of the period contemplated in the notice that the present Petition is filed. He states that the judgment in the matter of M/s. Pro Knits (supra) and Shri Shri Swami Samartha Construction and Finance Solution (supra) clearly covers the issue. He relied on paragraph Nos.6 to 8 of the judgment of Shri Shri Swami Samartha Construction and Finance Solution (supra) and contended that it is at the stage of issuance of auction notice that the present Petition is circulated before the Court.

7. I have heard the parties appearing for the Petitioners as well as the contesting Respondent Nos.1 to 3. The Apex Court in the matter of M/s. Pro Knits (supra) has in paragraph No.17 held as under :-

“17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such

action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework.”

8. The Apex Court in the matter of *Shri Shri Swami Samarth Construction & Finance Solution & Anr.* (supra) has considered the judgment of *M/s. Pro Knits* (supra) and has observed as under :-

“7. As has been noted above, the petitioning enterprise does not seem to have ever claimed the benefit of the terms of the FRAMEWORK after the demand notice under Section 13(2) of the SARFAESI Act was issued. It is at the stage of compliance with an order passed by the relevant Magistrate under Section 14 of the SARFAESI Act that this writ petition has been presented before this Court claiming benefits of the FRAMEWORK to restrain the respondent no.2 and its officers from proceeding further under the SARFAESI Act and other enactments except in the manner contemplated under the said Notification. We find the bona fides of the petitioning enterprise to be

suspect.

8. *Pro-Knits (supra)* is a decision of a coordinate Bench of this Court holding, inter alia, that the Notification is binding on the lending banks/secured creditors. Finding to the contrary by the High Court of Bombay in the judgment and order under challenge in the appeal was, thus, quashed. Though while stressing that the terms of the FRAMEWORK need to be followed by the lending banks/secured creditors before the account of an MSME is classified as NPA, this decision also lays stress on the obligation of the MSMEs by holding that "it would be equally incumbent on the part of the MSMEs concerned to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework". It was cautioned that "if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the bank/creditor concerned in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage". This decision, however, left unsaid something which we have explained hereinabove while construing the terms consistently to prevent undermining of rights that one central enactment confers by another."

9. In my respectful submission, the physical possession of the asset was taken on 15/05/2025. There was no challenge to this proceedings till 28/10/2025 i.e. nearly for more than 5 months.

The notice dated 22/09/2025 which was issued nearly more than 30 days ago was also not challenged. The auction sale is to be conducted on 29/10/2025 and the present Petition is produced today i.e. on 28/10/2025. The prayers in the Petition also do not indicate any challenge to the notice dated 22/09/2025, although a vague challenge appears to be made in the interim prayers on page 20.

10. The Petitioners have approached this Court at a fag end. The gross delay with which the Petitioners have approached this Court does not permit me to exercise any equitable relief in favour of the Petitioners. I therefore find no reasons to stay the auction to be held on 29/10/2025.

11. Even otherwise the Auction-cum-Sale notice is already issued on 22/09/2025. The Petitioners have not tendered the amount to the creditors as contemplated under Section 13(8) of the SARFAESI Act. Hence, it is doubtful if right of the Petitioners to any relief really survives in light of pronouncement of the Apex Court in the matter of *M. Rajendran & Ors. vs. KPK Oils &*

Proteins India (P) Ltd. & Ors. (2025) SCC OnLine SC 2036.

12. It is made clear that all steps which will be taken by the Respondent Nos.1 to 3 will naturally be subject to the outcome of the present Writ Petition.

13. Learned counsel for the Respondent Nos.1 to 3 is permitted to file affidavit in reply within a period of 3 weeks from today.

14. Place the matter for further consideration on **25th November, 2025.**

15. After the order was dictated, learned counsel for the Petitioners states that he requires leave of this Court to challenge the notice dated 22/09/2025. Leave granted. Amendment to be carried out forthwith.

(SANDESH D. PATIL, J.)