



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.924 OF 2023

Govinda Choudhary

...Petitioner

Versus

Saraswat Co-operative Bank Ltd.
& 4 Ors.

... Respondents

Mr. Shivan Desai with Ms. Riya Amonkar, Advocates for Petitioner.

Mr. U.R. Timble with Ms. Yadika Mandrekar, Advocates for
Respondent No.1.

Mr. Pavithran A.V. with Mr. Prasad Kholkar, Advocates for Respondent
No.3.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 26th OCTOBER 2026

ORDER :

1. Petitioner impugns order dated 15.09.2023, passed by Debts Recovery Appellate Tribunal at Mumbai (hereinafter referred to as 'DRAT') in IA No.293/2023 in Misc. Appeal No.67/2023, whereby DRAT rejected prayer of Petitioner to stay the execution and implementation of order dated 10.04.2023 and eventually refused to grant relief to restrain Respondent No.1-Bank from taking possession of flat bearing No.F-305, Supreme by the Woods, Pilerne, Bardez, Goa.

2. Petitioner contends that he was looking for residential accommodation in Bardez, Goa, when Respondent No.2 was constructing and developing various projects, including project called 'Supreme by the Woods'. Petitioner visited and inspected the site, particularly the subject flat and entered into an Agreement for Sale to purchase the flat for total consideration of Rs.55,00,000/- (Rupees Fifty Five Lakhs only). He paid margin money of Rs.11,00,000/- (Rupees Eleven Lakhs only) and obtained housing loan from Respondent No.4-Bank. Respondent No.3, the builder, transferred all rights, title and interest of the said residential flat in favour of Petitioner vide Agreement for Sale dated 29.04.2019 duly registered with Sub-Registrar of Bardez, Goa. On 12.06.2019, the Civil Registrar, Bardez, has issued Nil Encumbrance Certificate on this property in respect of said flat in favour of Petitioner. Petitioner mortgaged residential flat with Respondent No.4-Bank, which has been recorded in Memorandum of Entry dated 24.06.2019. Eventually, Respondent No.4-Bank recorded and registered it with CERSAI on 24.06.2019. Petitioner was put in to actual possession of flat on 15.07.2019. Respondent No.3 issued NOC for obtaining electricity supply, and intimated society about sale of residential flat to Petitioner.

3. To utter surprise of Petitioner, on 14.10.2020, Officer of Respondent No.1-Bank visited his flat for taking symbolic possession under SARFAESI Act, 2002. At that time, Petitioner came to know that Respondent No.2, Mr. Rebello, had obtained credit facility from Respondent No.1-Bank and security interest of State Bank of India was

created. Petitioner found that Respondent No.3-Builder had entered into transaction with Respondent No.2, however, Agreement for Sale dated 13.02.2017, was subsequently cancelled, the part payment received was refunded by builder to Respondent No.2. It is further revealed that in months of January/February 2021, Respondent No.2 approached Respondent No.1-Bank using forged tripartite Agreement showing that builder has consented to mortgage suit flat to Respondent No.1 and got registered subsequent mortgage/charge of Respondent No.1. Since he made default in payment of loan, Respondent No.1 initiated action under Sections 13 and 14 of SARFAESI Act.

4. Petitioner approached DRAT by filing Securitisation Application No.62/2023 along with Interlocutory Application No.468/2023 under Section 17 of SARFAESI Act seeking stay of notice of possession dated 15.03.2023 and to restrain Respondent No.1 from taking possession of the subject flat. However, by order dated 10.04.2023, DRT-I, Mumbai, dismissed interlocutory application observing that Agreement for Sale was already registered in the name of Respondent No.2. Aggrieved, Petitioner filed Misc. Appeal No.67/2023 before DRAT under Section 18 of SARFAESI Act along with Interlocutory Application No.293/2023. However, DRAT rejected Petitioner's application on the ground that the subsequent Agreement for Sale could not have priority over the mortgage by deposit of title deeds created. Hence, this Writ Petition.

5. Mr. Shivan Desai, learned Advocate appearing for Petitioner submits that Petitioner is neither a mortgagor nor a guarantor to the transaction

between Respondent No.1 and Respondent No.4. Petitioner has registered Agreement for Sale dated 29.04.2019 executed by Respondent No.3 and he is put in possession of the property. Respondent No.1-Bank claims security interest on the basis of the cancelled Agreement for Sale dated 13.02.2017 between Respondent Nos.2 and 3. The security interest, if any, created in favour of Respondent No.1-Bank by Respondent No.2, is subsequent to execution of Agreement for Sale in favour of Petitioner. Respondent No.1-Bank cannot claim any better right to initiate action under SARFAESI Act over the suit flat and disturb possession of Petitioner.

6. Per contra, Mr. U.R. Timble, learned Advocate appearing for Respondent No.1 submits that Respondent No.2 had registered Agreement for Sale with Respondent No.3-Builder. It is alleged to be cancelled by a notarised document dated 24.04.2019. When Petitioner entered into registered Agreement for Sale with Respondent No.3-Builder on 29.04.2019, property in question was mortgaged with State Bank of India against loan obtained by Respondent No.2 based on the Agreement for Sale of 2017. Respondent No.2 obtained loan from Respondent No.1 in February 2021, on the basis of registered Agreement for Sale of 2017. Respondent No.1-Bank released the amount which was deposited with State Bank of India upon which the mortgage was executed in favour of Respondent No.1-Bank. This would show that Respondent Nos. 2 and 3 committed fraud. Petitioner cannot claim better right to defeat the action taken by Respondent No.1 under SARFAESI Act, 2002.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that Petitioner is challenging order dated 15.09.2023 passed by DRAT at Mumbai whereby interim application filed by Petitioner has been rejected pending Misc. Appeal No.67/2023. The Misc. Appeal No.67/2023 is still pending consideration before the DRAT. All contentions of parties can be elaborately considered by Appellate Tribunal. Hence, it would not be appropriate for this court to delve into facts of case or decide on merits of contentions.

8. By order dated 09.11.2023, this Court granted interim relief in terms of prayer clause (b) of petition, which reads thus:

‘(b) For order restraining the Respondent no.1 from taking any coercive steps on the basis of order dated 09/01/2023 passed by the District Magistrate, North Goa, Panaji under Section 14 of the SARFAESI ACT, 2002 and be restrained from taking possession of the said flat i.e. Flat no. F-305, Supreme By the Woods, Pilerne, Reis Magos, Bardez, Goa, pending the hearing and final disposal of the present petition.’

9. Till this date, the interim relief granted is continued. Hence, purpose would be served, if DRAT is requested to consider and decide Petitioner's pending Appeal expeditiously and the interim relief granted by this Court is continued for limited period.

10. In the result, Writ Petition stands disposed of. DRAT is requested to consider and decide the pending Appeal of Petitioner within a period of four months from today. Till then, the interim relief granted by this Court vide order dated 09.11.2026 shall remain in force.

11. Needless to state that this Court has not dealt with merits of contentions of the parties and all contentions of parties are kept open to be deliberated and considered by DRAT.

S.G. CHAPALGAONKAR, J.