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Date: 2024.03.23  
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3132 OF 2024

Cholamandalam Investment &  
Finance Company Ltd.

..Petitioner

*Versus*

1. The State of Maharashtra,  
through Government Pleader  
& 5 Ors.

..Respondents

*Mr.Charles D'souza a/w. Mr.Alok Mishra, Advocates for  
Petitioner.*

*Ms.Dhriti Kapadia, AGP of Respondent Nos.1 and 2-State.*

*Mr.Ziyad Madon a/w. Mr.Nilesh Gala, Mr.M. Shah and  
Mr.Manish Gala, Advocate for Auction Purchaser.*

*Mr.Amitkumar S. Detke, Authorised Officer of Petitioner is  
present in Court.*

*Mr.Rajesh K. Gala, Representative of Auction Purchaser is  
present in Court.*

**CORAM : B. P. COLABAWALLA, J &  
SOMASEKHAR SUNDARESAN, JJ.**

**DATE : MARCH 22, 2024**

**P.C.**

1. By our order dated 13<sup>th</sup> March 2024, we had directed that possession of the secured asset would be handed over by

Respondent Nos.4 to 6 to the Petitioner-NBFC on 20<sup>th</sup> March 2024 at 11:00 a.m. This direction was passed pursuant to a statement made on behalf of Respondent No.4, who was also present in Court on the said date.

2. The matter was kept on Board for compliance yesterday. Yesterday, a grievance was made by the learned Counsel for the Auction Purchaser that although possession of the secured asset has been handed over to the Petitioner-NBFC, there is an apprehension that the Petitioner-NBFC will not put the successful Auction Purchaser in possession because the borrowers have handed over possession of the secured asset to the Petitioner-NBFC under a letter dated 20<sup>th</sup> March, 2024 in which it is stated that possession is handed over to the Petitioner-NBFC on the ground/condition that it shall not part with possession of the secured asset to anyone else. We therefore kept the matter today.

3. Today, when we enquired from the authorised officer of the Petitioner-NBFC as to whether he took possession pursuant to such a letter and why, we were informed that at the time of taking possession, there was a M.P. and M.L.A. present at site along with 30 to 40 people and the authorised officer was forced to accept the said letter from the borrowers containing such a condition. He

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submitted that all that the Petitioner-NBFC has done is to acknowledge the said letter but not agreed to any condition set out therein.

4. Today, conveniently, the Advocates for Respondent No.4 are not present. The authorised officer of the Petitioner is present in Court. He has tendered the letter which has been addressed by the borrower to the Petitioner-NBFC. The same is hand-written. The borrowers have handed over possession of the secured asset to the Petitioner-NBFC but have stated that the Petitioner shall keep possession to themselves. The authorised officer of the Petitioner-NBFC has stated that he has taken possession of the secured asset and only given an acknowledgment on the said letter. He has not agreed to the terms on which possession is given, especially considering that no such restriction was contained in the order passed by this Court on 13<sup>th</sup> March 2024.

5. We have perused the said letter dated 20<sup>th</sup> March 2024 along with the purported inventory and the purported panchanama prepared by the borrower. The same is taken on record and marked 'X' for identification. We find that since the secured asset is already sold to the successful Auction Purchaser and there is no stay granted by any Court, the Petitioner-NBFC is

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bound to hand over possession of the secured asset to the successful Auction Purchaser, ignoring the letter dated 20<sup>th</sup> March 2024. Accordingly we direct that possession of the secured asset shall be handed over by the Petitioner-NBFC to the successful Auction Purchaser, tomorrow, i.e., 23<sup>rd</sup> March 2024 at 11:00 a.m.

6. From what has transpired in the above matter, we find that that after giving a solemn undertaking to this Court, the borrowers have sought to put extra-judicial pressure on the authorised officer of the Petitioner-NBFC. This cannot be tolerated even for a minute. We are increasingly finding that borrowers are taking the law into their own hands. In fact, in the facts of the present case, even though physical possession of the secured asset had been handed over to the Petitioner-NBFC by Respondent Nos. 4 to 6 on an earlier occasion, the borrowers had trespassed into the secured asset by breaking open the locks and re-entering the same. A First Information Report to that effect is also lodged against Respondent Nos.4 to 6. It is keeping these facts in mind that the order dated 13<sup>th</sup> March 2024 was passed, where an undertaking was recorded on behalf of the borrowers that they will voluntarily hand over physical possession of the secured asset. Despite this order, the borrowers now seek to insert certain conditions on the Petitioner-NBFC and over-reach the orders passed by this Court.

7. In these circumstances, we direct that the borrowers namely, Respondent Nos.4 to 6 along with their Advocates, shall remain present in this Court on the next occasion and explain to the Court why they should not be punished for contempt of Court for trying to over-reach the orders passed by us. If they shall not remain present on the next date, we shall not hesitate to issue bailable/non-bailable warrants in their name, to secure their presence.

8. Stand over to 28<sup>th</sup> March 2024 at 2:30 p.m.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[SOMASEKHAR SUNDARESAN, J.] [ B. P. COLABAWALLA, J ]**