

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

WP(C) No. 2900/2024

CM No. 7921/2024

Mohammad Saleem Khan & Anr. ... Appellant/petitioner(s)

Through: Mr. Parvaiz Nazir, Advocate

Mr

V/s

J&K Bank Ltd. & Ors. ... Respondent(s)

**Through: Mr. Shafqat Nazir, Advocate with
Ms. Heena Baqal, Advocate**

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

(ORDER)

13.12.2024

1. The present petition has been filed by the petitioners who have prayed for setting aside the impugned order dated 15.11.2024 passed by the court of learned Chief Judicial Magistrate, Srinagar (for short CJM) under section 14 of the SARFAESI Act.
2. This is the second case before this Court filed by the petitioners. The first visit to this Court by the petitioners was challenging the Section 13 notice given by the respondent-bank for the recovery of an amount of a little over rupees one crore, issued against the petitioners after their account was declared Non-Performing Asset (for short hereinafter NPA).

3. The said writ petition being WP(C) No. 1581/2024 was disposed of by an order dated 24.07.2024. The entire order is reproduced herein below:-

“Learned counsel for the petitioner after arguing for a while seeks leave of this Court to withdraw the petition with liberty to file a representation before the respondent-Bank.

It may be noted that a representation earlier filed by the petitioner already stands rejected.

Writ petition is dismissed as withdrawn with aforesaid liberty.

In case the petitioner approaches the respondent-Bank with bonafide offer accompanied by substantial amount payable by him, the same shall be given due consideration”.

4. The learned counsel for the petitioners submits that the learned Chief Judicial Magistrate, Srinagar, has not considered the order passed by this Court on 24.07.2024, and, therefore, the order under Section 14 is bad in law. He has also stated that the learned Magistrate has not taken into consideration the fact that the representation preferred by the petitioners under section 13(3)(a) was not considered and replied to, by the respondent- Bank which also renders the order passed under section 14 bad in law.
5. The learned counsel for the petitioners, however, fairly does not dispute the legal aspect that under section 14, the Magistrate merely acts as an executing arm in favour of the respondent-Bank and does not decide the merits of either the borrower or the Bank.

6. As regards the order dated 24.07.2024 passed by the Coordinate Bench in the aforementioned writ petition, the learned counsel for the petitioners has also submitted that the direction of this Court to the Bank to consider the representation, if any, made by the petitioners has not been complied with by the Bank, as the Bank has not given any reply to the representation made pursuant to the order dated 27.04.2024.

7. The learned counsel for the respondent-Bank on the other hand has submitted that there is no infirmity with the order passed by the learned CJM, Srinagar. He further submits that the attempts of the petitioners to bring this case as a violation or non-conformity with section 13(2) of the SARFAESI Act cannot be looked into by this Court as the same was already challenged in WP(C) No. 1581/2024, which the petitioners withdrew after arguing for a while, seeking leave of the Court to file a representation before the respondent-Bank. He further submits that as the said withdrawal of the petition was without praying for any liberty to agitate the ground of non-compliance of section 13(2) of the SAFRAESI Act in a fresh writ petition, the same could not be agitated second time before this Court.

8. Further the learned counsel for the respondent-Bank has argued that the order dated 24.07.2024 directed the

petitioners herein to approach the Bank, is a bonafide order accompanied by a substantial amount payable by them. He has stated that though a representation was filed by the petitioners, not a part of pay was offered or paid after the order passed by the Coordinate Bench mentioned hereinabove.

9. As regards the contention put forth by the learned counsel for the petitioners that the second representation was never replied to by the Bank, the learned counsel for the respondents has placed before this Court the reply of the Bank dated 27.09.2024, wherein they have referred to the second representation which was an act of grace on the part of the Coordinate Bench pursuant to which the petitioners preferred an undated representation, received by the Office on 30.08.2024, which was duly replied by the Bank. A copy of the said reply has been placed before us along with the proof of dispatch and receipt by the petitioners.

10. As regards the said reply, it also mentions that the second representation was identical to the first representation permitted by the statute under section 13(3)(a) of the SARFAESI Act and the reply of 27.09.2024 adopted the reply given earlier by the Bank to the petitioners.

11.It was only thereafter the order under section 14 was passed by the learned CJM, Srinagar.

12.The learned counsel for the respondent-Bank has also drawn the attention of this Court to the order dated 24.07.2024, wherein the Coordinate Bench has also recorded the fact that the statutory representation made by the petitioners was already considered and rejected by the respondent- Bank.

Heard the learned counsel for the parties and perused the record of the case.

13. The mortgaged property is stated to have been gutted in fire on 17.12.2022 of which the intimation was given to the police.

14.The petitioners have received about Rs. 34.00 lacs by way of insurance payment for the mortgaged property that was gutted in the fire. The said amount of Rs. 34.00 lacs was never transferred to the Bank to be adjusted against the outstanding loan. The petitioners, however, stated that they had paid Rs. 20.00 lacs, but that was before their account was declared as NPA on 08.04.2024. Even after that, the petitioners have paid small amounts now and then.

15.The contention put forth by the learned counsel for the petitioners that as long as some payments were made by the petitioners, the account could not have been declared as

NPA, has strongly been opposed by the learned counsel for the respondent-Bank who says that the declaration of an account as NPA is a systemic process without any human intervention, where the EMIs due from the borrower, are not paid for approximately three consecutive months. Subsequent payment, that too less than the EMI does not reverse the process.

16. We are in agreement with the submission put forth by the learned counsel for the respondent-Bank.

17. Learned counsel for the petitioners as a final argument has requested this Court for grant of time to procure a buyer for the said property so that the petitioners get a fair price for the same as otherwise the Bank could sell it at a much lower price. To this, the learned counsel for the respondent-Bank has said that such an order would not lie within the scheme of the SARFAESI Act with specific reference to section 13(8) which provides an opportunity of redemption to the borrower where the total NPA is tendered to secure creditor at any time before the date of publication of notice for auction or inviting quotations or tender from the public.

18. The said provision clearly discloses that there is a right of redemption within the scheme of SARFAESI Act itself, and, that the petitioners are entitled to discharge their debt in its entirety and take possession and ownership of their

property before the publication of the advertisement for public auction. Therefore, the request of the petitioners cannot be acceded to.

19. In view of what has been argued, considered and held by this Court hereinabove, and the fact that the petitioners have not complied with the earlier order passed by the Coordinate Bench on 24.07.2024 in letter and spirit, this petition is devoid of merit and, is, accordingly, *dismissed*.

(Mohd Yousuf Wani)
Judge

(Atul Sreedharan)
Judge

SRINAGAR
13.12. 2024
"S.Nuzhat"

