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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1468 of 2015

1. M/s Khetan Sponge And Infrastructure Pvt. Ltd. Through its Director Arun Kumar Khetan, S/o Shri Ganesh Prasad Khetan, Aged About 52 Years, Regd. Office: Khetan Building, First Floor, Maudahapara, Police Station Maudahapara, Raipur, Distt. Raipur, Chhattisgarh.

2. Arun Kumar Khetan S/o Shri Ganesh Prasad Khetan Aged About 52 Years R/o House No. 6/54, Ganesh Ram Nagar, Raipur, Police Station, Gol Bazar, Distt. Raipur, Chhattisgarh

3. Smt. Rita Devi Khetan W/o Ashok Kumar Khetan Aged About 47 Years R/o House No. 6/54, Ganesh Ram Nagar, Raipur, Police Station Gol Bazar, Distt. Raipur, Chhattisgarh

4. Kailash Kumar Khetan S/o Shri Ganesh Prasad Khetan, Aged About 37 Years R/o House No. 6/54, Ganesh Ram Nagar, Raipur, Police Station Gol Bazaar, Distt. Raipur, Chhattisgarh

---- Petitioners

Versus

1. State Bank Of India, Stressed Asset Management Branch (S. A. M. Branch), Through Its Deputy General Manager, State Bank Building, First Floor, Plot No. 01, Arera Hills, Bhopal- 462011 (Madhya Pradesh)

2. District Magistrate/ Collector, Collectorate, Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Sumesh Bajaj, Advocate
For Respondent/Bank	:	Shri P.R. Patankar, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

Order

21/08/2015

Heard.

1. By this petition under Article 226 of the Constitution, the petitioners have assailed correctness and validity of order dated 25.7.2015 passed by the District Magistrate, Raipur in exercise of powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "*the Act of 2002*").

2. Learned counsel for the petitioners submits that the petitioners had raised substantial objections of preliminary nature with regard to maintainability of secured creditor's application under Section 14 of the Act of 2002 filed before the

District Magistrate, but the District Magistrate, without due and proper consideration of those objections, has passed the impugned order.

3. Learned counsel for the petitioner contended:

(a) that the documents creating mortgage was not properly stamped as per the rates of stamp duties applicable in the State of Chhattisgarh.

(b) mortgage was created at Mumbai, financial assistance was disbursed at Mumbai, all transactions were undertaken at Mumbai. Therefore, application under Section 14 of the Act of 2002 could not be filed before the Collector, Raipur.

(c) that the property alleged to be mortgaged is HUF property, therefore, no proceedings for taking possession on the said property could be taken under the provisions of the Act of 2002.

(d) that the property is in possession of the lessee of owners of the property, therefore, on that count also, no proceedings could be taken against the lessee.

(e) that the proceedings under Section 14 of the Act of 2002 could not be undertaken unless the steps have been taken to take possession under Section 13 (4) of the Act of 2002.

In support of his submissions, learned counsel for the petitioners places reliance on the judgments of the Supreme Court in the cases of **Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors.** (2011) 2 SCC 782 and **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Ltd. and Ors.**(2014) 6 SCC 1.

4. The application of the Bank placed on record as Annexure P-1 clearly shows that the petitioners had obtained loan from the Bank and had mortgaged property specified therein towards repayment of loan. The application of the Bank also shows that despite giving registered notice under Section 13 (2) of the Act 2002, the petitioners had failed to pay the amount due and payable under the notice.

5. The objection that the loan document was not sufficiently stamped is misconceived. Merely because the proceedings for recovery of possession are being taken where the property situated, it does not follow that the loan document must bear stamp duty at the rates application in the State of Chhattisgarh. The submission that the loan documents were executed at Mumbai, financial assistance was granted at Mumbati , therefore, proceedings under Section 13 (4)

of the Act could not be drawn at Raipur is misconceived, for the simple reason that the mortgaged property which was secured by the borrower with the creditor towards repayment of loan, it is admittedly situated in the territorial jurisdiction of tahsil and district Raipur.

The other objection that no proceedings under Section 14 of the Act of 2002 could be drawn without there being any proceedings for possession taken by the Bank under Section 13 (4) of the Act of 2002 is misconceived in view of the judgment of the Supreme Court in the case of **Standard Chartered Bank Vs. V. Noble Kumar and Ors.** (2013) 9 SCC 620, wherein the Supreme Court has held that it is not mandatory for the secured creditor to make an attempt to obtain possession on his own before approaching the Magistrate under Section 14 of the Act of 2002. It has been held that without taking recourse to taking possession of its own under Section 13 (4) of the Act, the secured creditor can directly apply to the Magistrate under Section 14 of the Act of 2002.

6. The other submission that the property alleged to be mortgaged was HUF property, therefore, no order could be passed under Section 14 of the Act of 2002 to take possession is misconceived because at the time of taking loan, the property was mortgaged by the borrower without making any such statement. Therefore, at this stage, borrower cannot be heard on this objection that it being a HUF property, possession could not be taken towards recovery of loan by the borrower.

7. Lastly, the submission that the secured assets being in possession of lessee, therefore, order of taking possession could not be granted by the Collector under Section 14 of the Act of 2002 is misconceived as this objection is completely hypothetical . It has not been clearly sated in the objection as to who is the lesses; what is the period of lease, nor any lease document has been discolored. The lessee has not come before this Court to resist taking of possession.

8. In view of the above considerations, the judgment cited by learned counsel for the petitioners are of no help to him, but on the other hand, clearly lay down that the Collector can pass appropriate orders for taking possession under Section 14 of the Act of 2002 on the application of the secured creditor.

9. In view of the above, the petition is misconceived in law and is, therefore, dismissed in *limine*, without notice to the other parties.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen