NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1481 of 2015

M/s Mohan Marketing (Wrongly Referred As M/s Shri Mohan Marketing In Impugned Order) A Proprietorship Concern, Through Its Proprietor Shri Ghanshyam Agrawal, S/o Shri Mohanlal Agrawal, Aged About 42 Years, Mohan Campus, Daldal Seoni Road, Mowa, Raipur, P. S. Shankar Nagar, Raipur, District Raipur, (Chhattisgarh)

---- Petitioner

Versus

1. State Bank Of India Through Its Authorised Officer, Stressed Assets Recovery Branch, Second Floor, Administrative Office, Byron Bazar, Raipur, Chhattisgarh

2. State Of Chhattisgarh, Through The District Magistrate, Raipur District, Chhattisgarh, Having Its Office At Collectorate Compound, Raipur- Chhattisgarh

3. Tehsildar, Raipur, Distt. Raipur, Chhattisgarh

4. Superintendent Of Police, S. P. Office, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Akshat Agrawal, Advocate
For Respondent/Bank	:	Shri P.R. Patankar, Advocate
For Respondent/State	:	Ms. Sunita Jain, Panel Lawyer

Order

24/08/2015

Heard.

1. By this petition under Article 226 of the Constitution, the petitioner has challenged the order passed by the District Magistrate 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. The grounds of challenge in this petition are that the petitioner, pursuant to notice, had submitted a reply on 23rd January, 2014. The case was taken up on 3.2.2014. Notice was issued for re-hearing, but the petitioner was not served with any notice and on 24th March 2014 the District Magistrate heard and reserved the case for orders on 31.3.2014. Thereafter, the petitioner was served with a notice dated 5.8.2015 on 12.8.2015 by which he was informed by the Tahsildar that vide order dated 31.3.2014, an order has been passed for granting physical possession of the property to the secured creditor. Thus, the petitioner was not afforded proper opportunity of hearing.

It is next contended that the statement submitted by the Bank before the Collector are misleading and incorrect. The demand notice dated 25.1.2003 comprises of alleged dues in cash credit limit Rs.97,71,101.63/-, term loan Rs.8,12,000.00/- and SME Car Loan of Rs.1,80,104.00/- aggregating to Rs.1,07,63,205.63/- It is submitted that the petitioner has not created security interest in favour of respondent- Bank in respect of all the loans demanded under the demand notice. This aspect was not considered by the authority.

In support of his submissions, learned counsel for the petitioner places reliance on the judgment in the case of **Standard Chartered Bank Vs. V. Noble Kumar and Ors. (2013) 9 SCC 620.**

3. The application under Section 14 of the Act of 2002 of the secured creditor/Bank shows that the petitioner had taken loan and the detail of secured assets have been clearly stated in the application by the Bank, which shows a mortgaged building in Ashoka Park, Plot No.02, Flat No.02, admeasuring 1195.72 sq. ft., Maharshi Valmiki Ward no.28, P.H. No.110, Village- Khamhardih (Shankar Nagar), Revenue Circle- Raipur, Tahsil and District-Raipur. The other secured asset stated is mortgaged shop No.32, area 240 sq ft. Shahid Hemu Kalani Ward No.25, Pagariya Complex, P.H. No.109/39, Pandari, Tahsil and District-Raipur.

4. The petitioner in his objection/reply has contested mainly on the ground of correctness of the statement. The correctness of the statement of loan and the debt liability cannot be gone into proceedings under Section 14 of the Act of 2002. The petitioner has made an evasive statement that security interest has not been created in respect of all loans demanded in the demand notice nor the secured assets. During the course of argument, it could not be disputed that in so far as dues against cash credit limit amounting to Rs.97,71,101.63/- and dues against term loan of Rs.8,12,000.00/- is concerned, the loan was obtained by securing the assets stated in the Bank's application under Section 14 filed as Annexure P-2. However, it is submitted that in so far as car loan is concerned, it was not granted against any secured assets. To that extent, learned counsel for the respondent-Bank submitted that the said loan is required to be dealt and realized separately and the proceedings towards taking possession are limited and confined towards recovery of the dues except car loan.

5. Learned counsel for the petitioner also submitted that before passing an order under Section 14 of the Act of 2002, the Collector is required to examine that the Bank has given specific statement and disclosurement as required under nine sub clauses of the proviso to Section 14 of the Act. A reading of the application under Section 14 of the Act of 2002 supported with an affidavit of competent authority of the prescribed officer substantially fulfills the aforesaid requirement of nine clauses of proviso to Section 14. Therefore, reliance on the decision in the case of **Standard Chartered Bank** (supra) is

misplaced on facts.

6. Therefore, as a result, no relief can be granted except with the observation that in so far as car loan is concerned, realization of the same would not be under the proceedings drawn by the Bank nor the proceeds of sale of secured assets under the order passed by the Collector shall be adjusted towards recovery of car loan.

7. With the said limited observation, the petition is disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen