VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 493 OF 2015

Nilesh Bhintade ... Petitioner
Vs.
State Bank of India & Ors. ... Respondents

***

Mr. Sriram Parakkal a/w Ms. Sarika Gohil i/b Aneesh Gurudas, for the Petitioner.

***

CORAM : V. M. KANADE, & A. R. JOSHI, JJ.

DATE : MARCH 2, 2015

PC.

1. Upon praecipe, matter is listed today under the caption "production".

2. Petitioner is a borrower and he is aggrieved by an order passed by the District Magistrate, who has directed that possession of the mortgaged property should be taken. The said order was passed on 31st March, 2012. It is submitted by the learned counsel appearing on behalf of the Petitioner that Petitioner has not been heard, and therefore, the impugned order is bad in law since it violates the principles of natural justice. Secondly, it is submitted that on account of the amended provision of Section 14 of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Securities Interest Act, 2002 (for short the "Act") it is incumbent on the District Magistrate to adjudicate the issue whether possession is to be taken or not, and therefore, after the amendment of Section 14; the District Magistrate is duty bound to give hearing to the Petitioner. Reliance is placed on the judgment of the Apex Court, in the case of – *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Co. Ltd. & Ors. [Cri. Appeal No. 736/2014, arising out of S.L.P. (Cri.) No. 1666 of 2012] dated 3rd April, 2014*.

3. Our attention is invited to the order passed by the Division Bench of this Court in Writ Petition No. 10615 of 2014, dated 26th November, 2014 in which this Court has observed that the borrower has right to be heard by the Chief Metropolitan Magistrate, if an application is filed under Section 14 of the Act. Various reliefs are claimed by the Petitioner in this petition. Petitioner is seeking a declaration that the DRT is a tribunal created in substitution of the civil court and is competent and duty bound to adjudicate the cause of action based on which he has sought the reliefs in the instant petition. Petitioner has also challenged validity of Sections 5, 6 and 7 of the said Act. Petitioner is also seeking a

declaration that the guidelines titled “Master Circular-Income Recognition, Asset Classification, Provisioning and Other Related Matters – UCBs” issued by the Reserve Bank of India are *ultra vires, unconstitutional and void*. It is submitted that the Petitioner being owner of the property in question viz. flat, his possession should not be disturbed in any manner whatsoever, and that the proceedings under Section 13(2), 13(4) and 14 of the said Act and the order dated 31.3.2012 passed by the District Magistrate are nullity. Petitioner is also seeking declaration that the order passed by the District Magistrate dated 31.3.2012 under Section 14 of the said Act is in violation of the judgment of the Apex Court in the case of – *Harshad Govardhan Sondagar (supra)*. Petitioner is also seeking a direction to the Respondent Bank to produce statement of account of the Petitioner / his company, and other related reliefs, which are found in prayer clauses (a) to (w) and also for other interim reliefs, which are found in prayer clauses (a) to (e).

4. We are unable to accept the submissions made on behalf of the Petitioner. The Apex Court in the case of - *Mardia Chemicals Ltd. and Ors. Vs. Union of India & Ors. [AIR 2004 SC 2371]* has already upheld validity of the entire Act and held that the

procedure followed by the Magistrate under Section 13(2) and 13(4) is constitutional, valid and that there is no violation of the principles of natural justice. The Apex Court in – *Transcore Vs. Union of India [AIR 2007 SC 712]* has examined three issues which fell before its consideration. The said three questions are as under:

(i) Whether the banks or financial institutions having elected to seek their remedy in terms of DRT Act, 1993 can still invoke the NPA Act, 2002 for realizing the secured assets without withdrawing or abandoning the O.A. filed before the DRT under the DRT Act.

(ii) Whether recourse to take possession of the secured assets of the borrower in terms of Section 13(4) of the NPA Act comprehends the power to take actual possession of the immovable property.

(iii) Whether ad valorem court fee prescribed under Rule 7 of the DRT (Procedure) Rules, 1993 is payable on an application under Section 17(1) of the NPA Act in the absence of any rule framed under the said Act.

These three questions are answered in favour of the Bank.

5. Therefore, there is no substance in the submissions made by the learned counsel appearing on behalf of the Petitioner

that provisions of Section 13(2) and 13(4) of the Act are *null* and *void*, and unconstitutional, since principles of natural justices are not followed.

6. The Apex Court in the said two judgments has clearly held that the procedure followed was essentially non adjudicatory in nature, and therefore, question of violations of principles of natural justice does not arise.

7. So far as the amended provision of Section 14 of the Act is concerned, said provision do not give any right to the borrower of being heard since the said procedure, which is to be followed by the Chief Metropolitan Magistrate or District Magistrate, is non adjudicatory in nature. By virtue of the said amendment, a duty is cast on the Bank to provide certain particulars, which are found in the proviso to Section 14(1), where Bank is supposed to make a statement, duly affirmed by an authorised officer giving details of facts, which are found in clauses (i) to (ix) of the said proviso. The Magistrate is supposed to examine whether these averments are made in the application and then he has to allow such application. If the Magistrate comes to

the conclusion that the information which is required to be given by the Bank, as envisaged in proviso (i) to (ix) to Section 14 is not found, then he can return the such application. Prior to amendment of Section 14, the Apex Court and some High Courts have taken a view that the borrower had no right of being heard in these proceedings. In fact, Section 14 clearly envisages that the Chief Metropolitan Magistrate or the District Magistrate is supposed to assist the secured creditor in getting possession. Right of taking possession is bestowed upon the secured creditor by virtue of Section 13(2) and 13(4) of the Act. Section 14 is, therefore, not a provision which authorises the Chief Metropolitan Magistrate or the District Magistrate to hand over possession but to assist the secured creditor in obtaining possession and for that purpose procedure has been mentioned. The borrower has an alternate remedy of filing appeal under Section 17 of the Act. If he establishes before the DRT that the measures which were supposed to be taken and followed by the Bank have not been followed, then possession can be restored to the borrower. The question, therefore, of giving personal hearing to the Petitioner in an application, filed under Section 14 of the Act, does not arise. We have recently disposed of group of petitions wherein similar issue has been raised and it is held that borrower does not have locus and no hearing can be given to him by the Chief Metropolitan Magistrate or the District Magistrate.

8. So far as the judgment in the case of *Govardhan Sondagar (supra)* is concerned, the said judgment clearly mentions that right of hearing is available only to a lessee and not to the borrower. To that extent only the judgment in the case of – *Tradewell Vs. Indian bank [2007(3) AIR Bom. 656]* has been over-ruled. In our view, the said judgment will not be of any assistance to the Petitioner.

9. All other issues which have been raised by the Petitioner have already been considered in *Mardia Chemicals (supra)* and other judgments, and as such, all those contentions are without any substance. The Petitioner may file curative petition or seek clarification from the Apex Court, if so advised. For the reasons stated by us in an order dated 23rd February, 2015, passed in a group of petitions, in a lead petition being *Writ Petition* No. 11459 of 2014, in the case of – *M/s. Hari Trading Corporation,*

Petitioners Vs. Bank of Baroda, Respondents, in which we have considered in detail the arguments advanced on behalf of the borrowers, on the same issue and declined to accept their contention. For the same reasons, we are not inclined to interfere with the order passed by the District Magistrate.

10. We are, therefore, not inclined to interfere with the order passed by the District Magistrate on the application filed under Section 14 of the Act. So far as judgment and order dated 26th November, 2014, in the case of *M/s. Ritex Overseas, Petitioner Vs. Dena Bank, Respondents (Writ Petition No. 10615/2014)* passed by the Division Bench of this Court [Coram : V. M. Kanade & Smt. Anuja Prabhudessai, JJ.] is concerned, the said judgment is passed without taking into the judgments of the Apex Court, and therefore, observations in the said judgment and order, being contrary to the law laid down by the Apex Court, are *per incuriam*. We are, therefore, not inclined to interfere with the impugned order passed by the District Magistrate. Writ petition, is therefore, dismissed.

Sd/-	Sd/-
[A. R. JOSHI, J.]	[V. M. KANADE, J.]

Vinayak Halemath