IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CASE No. W.P.No.18242 of 2015

Between:

M/s. Amit Cottons (P) Ltd., rep. by its Director Mr. Vinod Kumar Agarwal, and another … Petitioners

AND

State Bank of Mysore, Industrial Finance Branch, represented by its Authorised Officer, 6-3-865, My Home Jupally, Ameerpet, Hyderabad and 3 others … Respondents

DATE OF JUDGMENT PRONOUNCED: July 21, 2015.

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether reporters of local newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Lordships wish to see the Yes/No
fair copy of the judgment?

ORDER: (Per R. Subhash Reddy, J)

In this writ petition, petitioners have questioned the validity of the order dated 27.05.2015 passed by the Collector and District Magistrate, Mahabubnagar, vide File No.D3/1131/15, in respect of the property of the 1st petitioner, situated in Sy.No.745, NH-44, Chintaguda village, Shadnagar Mandal, Mahabubnagar District, in exercise of powers under Section 14 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "The Act").

2. The 1st petitioner-company, which is carrying on business of ginning and processing of raw cotton etc., availed loan facilities from consortium banks, viz., State Bank of Mysore, State Bank of India and State Bank of Hyderabad. The 1st respondent-Bank is the lead Bank of the said consortium. Towards working capital and loan facilities, 1st respondent-bank sanctioned Rs.68.25 crores apart from loans advanced by other banks. The 2nd petitioner is the Director of the 1st petitioner-company. The 1st petitioner also availed term loan of Rs.10 crores from the 1st respondent-Bank and created first charge on its fixed assets in favour of the

1st respondent-Bank. When the petitioners defaulted in paying loan amounts as referred above, the account of the petitioners was declared as “NPA” and the 1st respondent-Bank has taken steps under the Act and S.A.No.214 of 2015 filed by the petitioners before the 2nd respondent-Tribunal is also pending.

3. On the application of the authorised officer of the 1st respondent-Bank, the Collector and District Magistrate, Mahabubnagar has passed the impugned order, providing assistance for taking over the secured asset, in exercise of powers under Section 14 of the Act.

4. Heard Sri P. Amarender Reddy, learned counsel for the petitioners and Sri M. Narender Reddy, learned senior counsel on behalf of the 1st respondent-Bank.

5. Mainly, two grounds are urged by the learned counsel for the petitioners, assailing the validity of the impugned order. First ground is that the Collector and District Magistrate does not have any authority or jurisdiction to pass the impugned order. Second ground is that satisfaction as contemplated under Section 14 of the Act is not indicated in the impugned order. Learned counsel for the petitioners has placed reliance on order dated 07.02.2012 passed by a Division Bench of this Court in W.P.No.5241 of 2002 and, further, order dated 25.07.2014 passed in W.P.No.14694 of 2014 and

requested to post the instant writ petition along with the aforesaid writ petitions which are referred to Full Bench.

6. On the other hand, it is submitted by the learned Senior Counsel appearing for the 1st respondent-Bank, that Section 14 itself empowers the Collector and District Magistrate to pass orders providing assistance for taking possession of the secured asset. It is further submitted that only after filing necessary affidavit by the Recovery Officer, impugned order has been passed and there are no grounds to interfere with the same and the orders of the Division Bench, as relied on by the learned counsel for the petitioners, would not support the case of the petitioners.

7. At this stage, it is apposite to refer to Section 14 of the Act, which reads as under:

> "Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.
> (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession of control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan

Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-
(a) take possession of such asset and documents relating thereto; and
(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub- section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

8. A perusal of the aforesaid provision makes it clear that, where the possession of the secured asset is to be taken, on the request made by the secured creditor, the Chief Metropolitan Magistrate or the District Magistrate, within whose jurisdiction secured asset is situated, is empowered to pass orders providing assistance for taking possession of such secured asset. Further under sub-section (2), the Chief Metropolitan Magistrate or the District Magistrate is empowered to take steps or use such force which is necessary for complying the order passed under sub-section (1). Upon a bare perusal of the impugned order, it is clear that, in this case, the Collector and District Magistrate, Mahabubnagar District,

has passed the impugned order as much as secured asset is within the limits of Mahabubnagar District. In view of the plain language under Section 14 of the Act, the ground urged by the learned counsel for the petitioners that Collector and District Magistrate is not empowered to pass the impugned order cannot be accepted. In the order dated 07.02.2012 passed in W.P.No.5241 of 2002 by a Division Bench of this Court, it is held that Chief Judicial Magistrate is always construed as the Chief Metropolitan Magistrate, while exercising powers under Section 14 of the Act. In W.P.No.14694 of 2014, disagreeing with the view taken in the earlier order dated 24.07.2014 passed in W.P.Nos.15789 & 17625 of 2014, another Division Bench of this Court referred the matter to a Full Bench, on the following issue:

> "Whether the Chief Judicial Magistrate exercising his jurisdiction in corporation area can assist secured creditor in taking possession of secured asset and pass an order in favour of secured creditor for the purpose of taking possession or control of any secured asset?"

9. The aforesaid issue which is referred to Full Bench is not the issue which falls for consideration in the instant writ petition as much as the impugned order is passed by the Collector and District Magistrate. In the aforesaid writ petitions, the power of Chief Judicial Magistrate was under consideration, but not the order passed by the Collector and District Magistrate. As much as Section 14

of the Act clearly empowers the District Magistrate to pass order providing assistance for taking possession of the secured asset by the secured creditor, it is always open to the District Magistrate to pass such an order. The other ground urged by the learned counsel for the petitioners, that satisfaction as contemplated under Section 14 of the Act is not recorded, is not a valid ground to invalidate the impugned order, as much as it is only a provision for providing assistance on the application/affidavit filed and if the competent authority is satisfied, such authority is empowered to pass order providing assistance for taking possession of the secured asset. Further, under sub-section (2) of Section 14 of the Act, the authority is also empowered to take such steps and use such force as is necessary in his opinion for taking possession as contemplated under sub-section (1) of Section 14 of the Act.

10. For the foregoing reasons, we do not find any valid grounds to invalidate the impugned order.

11. Writ Petition is devoid of merits and is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the Writ Petition stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

July 21, 2015
MRR