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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1276 of 2015

- H. D. F. C. Ltd. Through Its Authorized Officer Alaska Tower Opposite Arogya Hospital Lodhipara Road, Shankar Nagar, Raipur Chhattisgarh Civil & Revenue District Raipur Chhattisgarh

---- Petitioner

Versus

1. The District Collector, District Durg Chhattisgarh
2. Santosh Kumar Singh S/o Late Shri R. Singh Aged About 53 Years R/o Quarter No. 1/A, Street No. 31, Sector 7, Bhilai Nagar Tahsil & District Durg Chhattisgarh
3. Smt. Shobha Singh W/o Shri Santosh Kumar Singh Aged About 47 Years R/o Quarter No. 1/A, Street No. 31, Sector 7, Bhilai Nagar Tahsil & District Durg Chhattisgarh

---- Respondent

And

WPC No. 1278 Of 2015

- H. D. F. C. Ltd. Through Its Authorized Officer, Alaska Tower, Opposite Arogya Hospital, Lodhipara Road, Shankar Nagar, Raipur (Chhattisgarh) Civil & Revenue District Raipur.

---- Petitioner

Vs

1. The District Collector, District Durg
2. Santosh Kumar Singh S/o Late Shri R. Singh Aged About 53 Years Resident Of Quarter No. 1/A, Street- 31, Sector - 7, Bhilai Nagar, Tahsil & District Durg (Chhattisgarh)

---- Respondent

For Petitioners	Mr. Mukesh Sharma, Advocate
For Respondent /State	Mr. Majid Ali, Panel Lawyer
For Respondent No.2	Mr. P.R. Patankar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

15/1/2016

Heard finally with the consent of learned counsel for the parties.

(2) The petitioner is a financial institution, which has extended financial assistance to the private respondent for construction/purchase of the house. On failure of the borrower, the petitioner has proceeded under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the Act, 2002") and has obtained symbolic possession under Section 13(4) of the Act, 2002. Since despite notice to the borrower, the outstanding amount was not paid, the petitioner moved an application under Section 14 of the Act before the District Magistrate for obtaining physical possession of the mortgaged property.

(3) By the impugned order, the District Magistrate has rejected the application on the ground that the borrower himself was a lessee of Bhiliai Steel Plant/Steel Authority of India Ltd. , therefore, he could not have created any mortgage in favour of the petitioner – Institution. The District Magistrate has referred the terms of the lease to conclude that the lessee i.e. the private respondent was not entitled to create mortgage of the subject property.

(4) The lease deed between the Steel Authority of India Ltd. and the private respondent has been annexed to the writ petition.

(5) Clause 2(i) of the terms of the lease provides thus :

> "2(i) Lessor shall have no obligation to provide any House Building Advance for the purpose of acquiring Company's houses on lease, in case employees are desirous of obtaining loan from any financial institution/HDFC/Bank, they can do so by mortgaging houses/flats, if so required by the financial institution."

(6) On reading of the above terms of the lease, it is manifest that the lease expressly permits creation of mortgage by the lessee in favour of the financial institution/HDFC/Bank. The finding recorded by the District Magistrate to the contrary is hopelessly perverse. It appears the District Magistrate has not read the terms of the lease and has assumed that the private respondent being a lessee, he has no right to create any mortgage.

(7) In the considered opinion of this Court, the matter deserves to be decided afresh by the District Magistrate, therefore, these writ petitions are disposed of with a direction that the District Magistrate shall restore the proceedings and decide the petitioner's application for obtaining delivery of possession of the mortgaged property, on its own merits, in accordance with the provisions contained in Section 14 of the Act, 2002. Let the District Magistrate conclude the proceedings and decide the application within a period of 3 months from the date of receipt of the certified copy of this order.

Sd/-

Judge

(Prashant Kumar Mishra)

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