NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2049 of 2016

Order Reserved On : 16.08.2016
Order Passed On : 19/10/2016

- Satya Mohan Gupta S/o Shri Ved Prakash Gupta, Aged About 55 Years R/o M I G 132, Housing Board Colony, Tatiband, District- Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Dena Bank Through- Its Branch Manager, Dena Bank Branch, Tatiband, Raipur (Chhattisgarh)

2. The District Magistrate, Raipur, Raipur District (Chhattisgarh), Having Its Office At Collectorate Compound, Raipur (Chhattisgarh)

3. M/s Maa Mahamaya Minerals, Plat No. 23 B, Industrial Area, Silphari, Bilaspur, District- Bilaspur (Chhattisgarh)

4. Smt. Lilavati Singh, W/o Shri Devakinandan Singh, aged about years, R/o Behind Tarun Press Govind Nagar, Pandritarai, Raipur (Chhattisgarh)

5. Devakinandan Singh, aged about years, R/o Behind Tarun Press Govind Nagar, Pandritarai, Raipur (Chhattisgarh)

6. Smt. Suchita Gupta, Partner M/s Maa Mahamaya Minerals Address : M I G 132, Housing Board Colony Tatibandh, District Raipur (Chhattisgarh),

---- Respondent

For Petitioner : Shri Rakesh Dubey, Advocate.
For Respondent/State : Shri P.K. Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. Challenge in this petition is to the order passed by the Collector cum 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 (for short 'the Act') whereby the District Magistrate has directed for handing over physical possession of the house bearing No.MIG-132, area 1743.12 square feet at Tatibandh, Ward No.1, Raipur to respondent No.1 bank.

2. M/s Maa Mahamaya Minerals, a partnership firm, being respondent No.3 obtained term loan of Rs.47 lakhs from the respondent Bank. However, it committed default in repayment of loan for which notice under Section 13(2) of the Act was served on the firm as well as on the petitioner on 23.12.2014. The bank thereafter proceeded to invoke sub-section (4) of Section 13 of the Act to obtain possession of the secured assets. However, when the borrower/guarantor objected to handing over of the physical possession, the bank moved an application before the District Magistrate, Raipur under Section 14 of the Act. The impugned order has been passed by the District Magistrate, Raipur directing delivery of physical possession of the secured assets.

3. It is argued that the impugned order is without jurisdiction as well as highhanded in view of the fact that the secured asset is residential premises of the petitioner, therefore, in the event of dispossession, he will be rendered homeless. It is also argued that the application filed by the bank is vague inasmuch as the bank has not come forward as to what is the preparation on its part to take physical possession and run the unit of the petitioner company or efforts earlier taken by the bank in getting physical possession and what difficulty was faced.

4. Having heard learned counsel for the petitioner and on perusal of the papers, it would manifest that the impugned order is for obtaining physical possession of the residential property bearing House No. MIG-132, area 1743.12 square feet at Tatibandh, Ward No.1, Raipur and not for obtaining possession of the factory premises for which a separate proceeding might have been initiated with which this Court is not concerned in this petition. It is not a case where the petitioner would contend that the property in question was never mortgaged to make it a secured asset. Once the petitioner admits the loan transaction and creation of security in respect of the secured assets, the impugned proceeding under Section 14 of the Act is not without jurisdiction.

5. It has not been demonstrated as to how the impugned proceedings are without jurisdiction or are barred by any law.

6. In the matter of **Pegasus Assets Reconstruction Private Limited Vs. Haryana Concast Limited and Another** {(2016) 4 SCC 47}, the Supreme Court has held that intention of the Parliament expressed in Section 13 of the SARFAESI Act is clear that the secured creditor has a right to enforce its security interest without intervention of the Court or Tribunal. Thus, the bank has authority and the District Magistrate has jurisdiction under Section 14 of the Act to proceed to take steps for handing over physical possession of the secured assets to the bank without intervention of the Court.

7. True it is that in the matter of **Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and Others** {(2014) 6 SCC 1}, the Supreme Court has held that an order under Section 14 of the SARFAESI Act being final, it can be challenged only by preferring a petition under Article 226/227 of the Constitution of India, however, the scope of interference in such matters is extremely limited. Interference would be made by the High Court only when proceeding under Section 14 of the Act is without jurisdiction or tainted with proved malafide or it is so arbitrary or irrational that allowing proceeding to conclude would

occasion failure of justice.

8. Having examined the matter, the impugned order is neither found to be without jurisdiction nor malafide or arbitrary. In such financial matters, the High Court may not interfere in a routine manner unless extraordinary case is made out. No such case for interference is made out in this writ petition.

9. For the foregoing, the Writ Petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve