IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1475 of 2014
IN
Civil Writ Jurisdiction Case No. 11378 of 2014

==

Syndicate Bank through its Regional Manager, Regional Office, Maurya Lok Complex, Patna

.... Appellant

Versus

1. Rajesh Kumar, son of Late Babaji Ray, R/o Mohalla- Nandpuri Bhagwanpur, P.S.- Sadar, District- Muzaffarpur
2. The State of Bihar through the District Magistrate, Muzaffarpur
3. The District Magistrate, Muzaffarpur
4. The Regional Manager, Regional Office, Maurya Lok Complex, Patna
5. The Branch Manager, Syndicate Bank, Ramdayalu Nagar Branch, Muzaffarpur

.... Respondents

==

Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Advocate
For the Respondent/s : Mr. Y.P. Sinha, AAG-7
Mr. Shankar Kumar, AC to AAG-7

==

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 11-05-2017

The Bank, who was respondent nos. 3 to 5 in the writ application, have preferred this intra-court appeal aggrieved by the order dated 25.07.2014, passed in C.W.J.C. No. 11378 of 2014 directing for re-initiation of SARFAESI proceedings from the stage of notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act).

2. Heard the learned counsel for the parties.

3. The writ petitioner, who is respondent no. 1 in the present appeal, had preferred the writ petition seeking the following reliefs :

> *"...for quashing of notice dated 20.06.2014 for vacation of premises/ property of the petitioner situated at Mohalla-Nandpuri (Bhagwanpur) District- Muzaffarpur without taking recourse to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI ACT), whereby and where under the respondent Bank has given notice to the petitioner to vacate the premises/ house/ building upto 25.06.2014 after which the bank may put its lock on the premises/seize the property on any day without any further notice observing therein is that we have initiated action under SARFAESI Act, 2002 read with SARFAESI RULES there under and taken possession of the secured assets under Section 13(4) of the SARFAESI ACT. Further, in terms of the provisions of the Act, the District Magistrate, Muzaffarpur has been directed for taking physical possession/ seizure of the secured assets and has directed for deputation of Magistrate and police force for the purpose vide his order dated 07.02.2014."*

4. The main contention of the private respondent in the writ petition was that before taking recourse to the provisions of

Section 13(2) of the SARFAESI Act, the appellant Bank has initiated 13(4) proceedings and thereby taking possession of his premises and property situated at Mohalla Nandpuri (Bhagwanpur), District Muzaffarpur, thus, denying him opportunity to file objection under Section 13(3A) of the SARFAESI Act.

5. The learned Single Judge has dealt, rather extensively, regarding the SARFAESI proceedings initiated against the private respondent who had taken a credit facility of Rs. 7 lakhs from the Bank on 25.09.2007 and since the account became Non-Performing Asset (NPA), the loan was recalled and the writ petitioner was held liable to pay the entire loan amount with interest by the appellant Bank.

6. Private respondent contended that the notice sent under Section 13(2) of the SARFAESI Act was not received although the Bank in the counter affidavit in the writ had categorically stated that a notice under Section 13(2) was sent on 27.09.2011 through registered post on 22.10.2011, but the learned Single Judge observed that since the registered cover sent on 22.10.2011 did not return back to the Bank at any point of time, the presumption would be that notices were not served on the petitioner and had this to observe :

> *"In the considered opinion of this Court presumption of a notice to be served under Section 13(2) of the SARFAESI Act, having a penal provision and*

capable of even dispossessing a person from his mortgaged property, cannot be so lightly inferred. The presumption of non-return of the registered cover, as envisaged under Order V Rule 19-A of the Code of Civil Procedure ipso facto can not be made applicable to the proceedings under SARFAESI Act in absence of such a provision made in the Act and the Rules framed thereunder. In any event, when two notices were prepared and signed by the authorized officer on 27.09.2011 and yet only of them was said to be sent only on 22.10.2011, there would be itself a big question as to which whom the notices were sent because the such notices were required to be sent separately to borrower and guarantor. There is however nothing on record to show that notices were sent to both, borrower and guarantor even though the petitioner, Rajesh Kumar, was both borrower and guarantor.

In the present case, since notices were to be sent to the borrower and the guarantor, in terms of Section 13(2) of the SARFAESI Act, at least two registered cover were required to be sent. Therefore, this Court is not satisfied with the explanation of the authorities of the Bank that merely on account of non-return of the registered cover, allegedly sent on 22.10.2011, there would a presumption of service of notice under Section 13(2) of the SARFAESI Act.

The matter can be viewed from yet another angle. If the notices were deemed to have

> *been served, the Bank was required to have at least gathered proof of such service. The Bank, therefore, could have approached the authorities of the Postal Department to know the fate of the registered cover No. 5704 dated 22.10.2011 for being sure that the notices were actually served on the petitioner. No evidence however, has been sought to be collected by the Bank much less produced before this Court to satisfy that such notices under Section 13(2) of the SARFAESI Act was actually served on the petitioner.*

7. Hence, the learned Single Judge has committed no error as the ingredients of Section 13(2) of SARFAESI Act not being satisfied, the writ petitioner was deprived of filing his statutory objection under Section 13(3A) of the SARFAESI Act, hence, notice under Section 13(4) of the SARFAESI Act by which possession of the property/ premises of the private respondent had been taken over by the Bank was quashed and the Bank was allowed to proceed from the stage of 13(2) notice.

8. There was yet another question which has to be adjudicated. The appellant after issuance of notice under Section 13(4) took symbolic possession over the mortgaged property which was published in the two daily newspapers. At the same time, invoking the provisions of Section 14(1) of the SARFAESI Act, the Bank for the purpose of taking possession or control of such secured asset

requested the District Magistrate, Muzaffarpur for taking possession and control of the said property and the District Magistrate, whose role is to provide security and facility to the Bank in taking possession and control of such secured asset, *suo moto* initiated a proceeding vide Case No. 44/2013-14 and by order dated 07.02.2014 allowed the Bank to take physical possession of the property after taking assistance of the police and deputation of the Magistrate in this regard. The said action of the District Magistrate came to be challenged by the private respondent before the learned Single Judge, as well.

9. Adverting to the provisions of Sections 14(1) and 14(2) of the SARFAESI Act, the intent and purpose of the District Magistrate is to assist the Bank in taking possession of secured asset and also take such steps or use such position, as may be necessary. Sections 14(1) and 14(2) of the SARFAESI Act are reproduced hereinbelow :

> *"14(1) Where the possession of any secured asset 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 or 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 of 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."

10. Thus, from the plain reading of Sections 14(1) and 14 (2) of the SARFAESI Act, it is evident that the role of the District Magistrate is to "assist, "take or cause to be taken for such steps and use, or cause to be used, such force" as may, in his opinion be necessary. The District Magistrate was not an adjudicatory authority, rather it is only for assistance and if necessary provide police force, but the District Magistrate on his own on the requisition of the appellant Bank had initiated Case No. 44/ 2013-14 asking both parties to appear and has passed an adjudicatory order. This is not

permissible under the SARFAESI Act as the duty of the District Magistrate under the SARFAESI Act is to provide assistance, take steps and provide force, if necessary and not to act as an adjudicatory authority. Thus, the order dated 07.02.2014, passed in Case No. 44/2013-14 by the District Magistrate, Muzaffarpur has been rightly quashed by the learned Single Judge. The order of the learned Single Judge, thus, does not suffer from any infirmity. Appeal is dismissed.

(Nilu Agrawal, J)

I agree.
Ajay Kumar Tripathi, J.

(Ajay Kumar Tripathi, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	04.05.2017
Uploading Date	11.05.2017
Transmission Date	NA