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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1928 of 2016

(Arising out of order dated 12-7-2016 in Revenue Case No.78/B-121 Year 2013-2014 of the learned District Magistrate, Durg)

1. M/s Madhuban Vehicles and Fertilizers Private Limited, Corporate Identity Number: U50100CT2010PTC021984 (Incorporated under the Companies Act, 1956) Dhamdha Road, Jevra, Sirsa, Durg-491001, Through Director.

2. Mithilesh Singh, aged about 35 years, S/o Shri Kamal Singh, Director M/s Madhuban Vehicles and Fertilizers Private Limited (Mo.No.09977301505)

3. Kamlesh Bhan Singh, aged about 65 years, S/o Late Shri Gulab Singh

4. Santosh Kumar Singh, aged about 32 years, S/o Shri Kamal Bhan Singh

5. Smt. Sushila Devi Singh, aged about 62 years, W/o Shri Kamal Bhan Singh

   Petitioners No.2 to 5 R/o Village Jevra, Sirsa, Dhamdha Road, Tahsil and District Durg (C.G.)

---- Petitioners

Versus

1. Hon'ble District Magistrate, Durg – 491001, Collectorate, Tah. & Distt. Durg (C.G.)

2. Authorized Officer, State Bank of India, Secured Creditor, Enforcement Recovery Branch, Sector, 1, Bhilai Nagar, Tahsil & District Durg (C.G.)

3. Hon'ble Tahsildar, Durg – 491001, Tah. & Distt. Durg (C.G.)

4. Incharge Police Chowki, Jevra, Sirsa, Durg, Tah. & Distt. Drug (C.G.)

---- Respondents

For Petitioners: Mr. V.G. Tamaskar, Advocate.
For Respondents No.1, 3 and 4 / State: -
Mr. Aditya Sharma, Panel Lawyer.
For Respondent No.2: Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/08/2017

1. Invoking the jurisdiction of this Court under Article 226/227 of the Constitution of India, the petitioners herein who are borrowers and guarantors have called in question legality, validity and correctness of the order dated 12-7-2016 passed by the District Magistrate, Durg granting application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') directing handing over of physical possession.

2. In an application filed under Section 14 of the SARFAESI Act by the Bank – Secured Creditor, the petitioners filed reply raising preliminary objection stating that the mortgage is not validly registered under the provisions of the Transfer of Property Act, 1882 and therefore the entire proceeding initiated by the Bank – Secured Creditor is unsustainable in law, as the mortgage deed has not been registered in accordance with law. The District Magistrate by its impugned order held that legal questions raised by the petitioners qua the registration of mortgage deed cannot be decided while considering the application under Section 14 of the SARFAESI Act, as right to adjudicate has not been conferred by the legislature to the District Magistrate exercising jurisdiction under Section 14 of the SARFAESI Act and this jurisdiction lies with the Debts Recovery Tribunal.

3. Learned counsel for the petitioners would submit that the order passed by the District Magistrate is unsustainable and bad in law.

He placed strong reliance upon a decision of the Supreme Court in the matter of **State of Haryana and others v. Navir Singh and another**[1] to support his submission that mortgage by deposit of title deeds is not permissible unless it is registered in accordance with the provisions of the Registration Act, 1908 read with the Transfer of Property Act, 1882. Further placing reliance upon a decision in the matter of **Satti Venkateswara Reddy v. Mallidi Venkata Reddy**[2], he would submit that exemption is only in notified terms.

4. On the other hand, learned counsel appearing for the Bank would submit that legal questions cannot be adjudicated by the District Magistrate, as no power of adjudication has been conferred to the District Magistrate.

5. The vires of the SARFAESI Act was taken-up for consideration before the Supreme Court in the matter of **Mardia Chemicals v. Union of India**[3]. The constitutional validity of Section 14 of the SARFAESI Act specifically came for consideration in the case of Siddhi Vinayak Hotels (P.) Ltd. v. Union of India (W.P. No.26663 and 27553 of 2005, decided on 17-2-2006) before the Andhra Pradesh High Court. It was held as under upholding the constitutional validity of Section 14 of the SARFAESI Act: -

> "An analysis of the above reproduced provisions show that by virtue of non obstante clause contained in Sub-section (1) of section 13 any security interest created in favour of any secured creditor may be enforced without the intervention of the court or Tribunal. In terms of Sub-section (2) the secured creditor can issue notice to the borrower requiring the latter to discharge his liabilities within sixty days from the date of notice. Such notice is required to be delivered in accordance with rule 3 of the

1 AIR 2014 SC 339
2 AIR 2016 Hyderabad 24
3 (2004) 4 SCC 311

Rules. On receipt of notice issued under Sub-section (2), the borrower can make a representation or raise objection against the demand. The secured creditor is required to consider such representation or objection. If it is found that the representation or objection is not acceptable or tenable, then the secured creditor is duty bound to communicate the reasons for non-acceptance to the borrower. If the borrower fails to discharge his liability in full within a period of sixty days specified in Sub-section (2), the secured creditor can take recourse to one or the other mode as specified in Sub-section (4). One of the modes is to take over the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. The secured creditor can also appoint any person to manage the secured assets of which possession has been taken over. Any person who may have acquired any of the secured assets from the borrower can also be called upon to pay such sum of money as may be sufficient to pay the secured debt. Section 14(1) lays down that 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, then he may, for the purpose of taking possession or control of any such secured asset make an application in writing to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto is situated or is found for taking possession thereof. On receipt of such request, the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall take possession of the asset or document and forward the same to the secured creditor. Sub-section (2) of Section 14 empowers the Chief Metropolitan Magistrate or the District Magistrate to take appropriate steps or use, or cause to be used, such force, as may be necessary for taking possession of secured assets and documents relating thereto. Sub-section (3) of Section 14 declares that any action taken by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 shall not be called in question by any court or before any authority. Section 17 which is captioned as "Right to appeal" lays down that any person (including the borrower) aggrieved by any of the measures taken under Sub-section (4) of Section 13 by the secured creditor or his authorized officer can make an application to the Debts Recovery Tribunal within forty five days from the date of taking such measures. Under Sub-section (2) of Section 17 the Debts Recovery Tribunal is required to consider whether any of the measures taken by the secured creditor under Sub-section (4) of Section 13 for enforcement of security is in accordance of the provisions of the Act and Rules made thereunder. If the Tribunal comes to the conclusion that such measure is not in accordance with the provisions of Securitisation Act and Rules, then it may require restoration of management of business to the borrower or restoration of possession of the secured assets and declare that the action taken by the secured creditor is invalid. The Tribunal can pass any other appropriate order in regard to the steps taken by the secured creditor under Section 13(4). If the Tribunal declared that the action taken by the secured creditor is in consonance with Sub-section (4) of Section 13 then such creditor can take recourse to one or more of the modes mentioned in Section 13 for the purpose of recovery of secured debts.

A conjoint reading of Sections 13(4) and 14 makes it clear that the source of power to take possession of the secured assets of the borrower can be traced in Section 13(4) and not under Section 14, which has been enacted as an aid for execution of decision taken by the secured creditors to take possession of the secured assets or documents. To put it differently the substantive provision entitling the secured creditor to take possession of the secured assets is contained in Section 13(4) and Section 14 merely contains a provision to facilitate taking over of possession without any impediment. If a person feels aggrieved by the action of the secured creditor to take possession of the secured asset, then he can file an application under Section 17(1) before the Tribunal and the Tribunal can, after examining the facts and circumstances of the case and evidence produced by the parties declare that the action taken by the secured creditor is not inconsonance with Section 13(4). The Tribunal can also direct the secured creditor to restore the possession of secured assets of the borrower.

In view of the above analysis of the relevant provisions, we are inclined to agree with Mr. Mohan Parasaran that right of appeal/representation available to the aggrieved person under Section 17 can be exercised as and when the secured creditor decides to take possession of the property. He can also challenge order passed by the Chief Judicial Magistrate or the District Magistrate, as the case may be, under Section 14 of the Securitisation Act.

If Section 14 is read in the manner indicated above, it is not possible to accept the argument of the learned counsel for the petitioners that the same is violative of Article 14 of the Constitution.”

6. The Gujarat High Court while upholding the constitutional validity of

Section 14 of the SARFAESI Act in the matter of **<u>Mansa Synthetic Pvt. Ltd. and others v. Union of India and another</u>**[4] has held that taking possession of secured assets, District Magistrate/Chief Metropolitan Magistrate has a ministerial role in form of rendering assistance to secured creditor in taking possession and he is not vested with any adjudicatory powers and further not empowered to decide the question of legality and propriety of any actions taken by secured creditor under Section 13 (4) of the SARFAESI Act. The Gujarat High Court observed as under: -

> "15.2 On a plain reading it is apparent that the said provision is a procedural provision whereunder the Chief Metropolitan Magistrate or the District Magistrate, (the Authority) as the case may be, shall, on a request being made to him – (a) take possession of such asset and documents relating to the assets; AND (b) forward such assets and documents to the secured creditor. Under sub-section (2) of Section 14 of the Securitisation Act the authority is empowered to take such steps and use such force as may be necessary for taking possession of the secured assets and the documents relatable thereto. Under sub-section (3) of Section 14 of the Securitisation Act, such act of the authority is protected and the action shall not be questioned in any Court or before any authority. Thus, it is apparent that the role envisaged by the legislature insofar as the Authority is concerned, is a ministerial role in the form of rendering assistance and exercising powers by virtue of the authority vested in the District Magistrate or the Chief Metropolitan Magistrate including use of force as may be necessary. The said Authority, namely, the Chief Metropolitan Magistrate or the District Magistrate is not vested with any adjudicatory powers. There is no other provision under the Securitisation Act in exercise of which the said Authority, who is approached by a secured creditor, can undertake adjudication of any dispute between the secured creditor and the debtor or the person whose property is the secured asset of which possession is to be taken. If such adjudicatory powers were to be vested in the Authority, the Securitisation Act would have made a specific provision in this regard.
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> 15.5 Hence, the Authority who is called upon to act

4 AIR 2012 Gujarat 90

under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. Any dispute between the parties regarding the secured asset raised before the Authority cannot be gone into by the Authority.

20. Our final conclusions are summarised thus :

(i) Section 14 of the Act is a valid piece of legislation and is declared intra vires.

(ii) The District Magistrate or Chief Metropolitan Magistrate, as the case may be, is bound to assist the secured creditor in taking possession of the secured assets and is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4) of the Act.

(iii) Though Section 14 of the Act provides that no act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any Court or before any authority, the right of judicial review under Articles 226 and 227 of the Constitution of India cannot be taken away, but that power can be exercised only in cases where the concerned Magistrate or the Commissioner, as the case may be, exceeds his power or refuses to exercise his jurisdiction vested in him under the law.

(iv) Absence of an appeal does not necessarily render the legislation unreasonable as only because no appeal is provided under the Act against the order passed under Section 14 of the Act will not render Section 14 ultra vires the provisions of the Constitution of India."

7. A Division Bench of the Kerala High Court in the matter of **Rafeeque v. Union of India**[5], while upholding the constitutional validity of Section 14 of the SARFAESI Act held that the process by means of which assistance is provided by the Chief Metropolitan Magistrate or the District Magistrate is non-adjudicatory. It was pertinently held as under: -

"However, the restriction provided by sub-section (3) to

5 I (2014) BC 414 (DB) (Ker)

> section 14, does not at all ensure to benefit the borrower to contend that the total absence of an appellate or revisional remedy makes the provision itself unconstitutional. As has been found by us, section 14 is an enabling provision in the nature of assistance extended to the secured creditor to bring to culmination the proceedings issued under section 13(4). Any action taken under section 13(4) is appealable under section 17 of the Act and in the event of such appeal being allowed, necessarily the order of the jurisdictional magistrate issued under section 14 will not survive thereafter."

8. Similarly, the Madras High Court in the matter of **Kanderi Fruitpack Pvt. Ltd. v. Bank of Baroda**[6] succinctly held as under: -

> "The learned Chief Metropolitan Magistrate, in fact does not adjudicate any dispute, but renders assistance to ensure that the powers of secured debtor to take over possession as one of measures to recover the debt under Section 13(4) of the Act of 2002."

9. In the matter of **Nagarathna and others v. The Indian Bank, Koramangala Branch and others**[7], the Karnataka High Court speaking through S. Abdul Nazeer, J (as then His Lordship was), considered the legislative mandate as contained in Section 14 of the SARFAESI Act and summarised the law as under: -

> "10. Section 14 of the Act provides for granting assistance to the secured creditor to take possession of the secured asset. It states that 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 the 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 therefore, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him forward such assets and documents to the secured creditor provided that any application by the secured

6 AIR 2015 Mad 50
7 IV (2015) BC 179 (Kar.)

> creditor shall be accompanied by an affidavit duly affirmed by the Authorised Officer of the secured creditor, declaring that the Provision of the Act and the Rules made thereunder had been complied with. Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets. ..."

10. Recently, a Division Bench of the Allahabad High Court in the matter of **<u>M/s. Lakshya Concosts Pvt. Ltd., Aligarh and others v. Bank of Baroda and others</u>**[8] while dealing with Section 14 of the Act of 2002 has held that Section 14 of the Act of 2002 does not empower the District Magistrate with any power to adjudicate regarding dispute pertaining to secured assets and held as under: -

> "11. ... In our considered opinion, Section 14 of the Act is procedural in nature and only empowers the authorities to assist the secured creditor in taking over possession of the secured assets as per the procedure contemplated therein. The Section does not empower the authorities specified therein with any power to adjudicate in respect of any dispute pertaining to the secured assets. Power exercised by the authorities specified in Section 14, since is only an administrative power, authorizing any authority to exercise the same, will not amount to delegation of power."

11. In a decision rendered by the Bombay High Court in the matter of **<u>S.I.C.O.M. Ltd., Nagpur v. District Magistrate/Collector, Nagpur and others</u>**[9], the Bombay High Court has clearly held that District Magistrate cannot enter into question of validity of mortgage in respect of secured asset and declare the mortgage to be invalid, as he cannot adjudicate on validity of the instruments by which asset is secured. The report of the Bombay High Court reads thus,

> "7. Having considered the matter, we are of the view

8 AIR 2017 All 172
9 AIR 2011 Bombay 32

> that the District Magistrate to whom the petitioner had forwarded the request in writing for taking over possession of the mortgaged asset, had no power or authority in law to enter into the question of the validity of the mortgage in respect of secured asset and declare the mortgage to be invalid and thus refuse to perform the duty imposed upon him by the SARFAESI Act. Section 14 contains a clear mandate for the District Magistrate that he shall take possession of such asset and documents relating thereto and upon such request he shall forward such assets and documents to the secured creditor. The Act does not confer any power on the District Magistrate to transform himself into the Court of law with powers to adjudicate on the validity of the instrument by which the assets is secured. ..."

12. Similarly, in the matter of **Jawahar Singh v. United Bank of India and others**[10], similar proposition has been struck by the Calcutta High Court and in paragraphs 63 and 72, it has been held as under: -

> "63. The marginal note of section 14 shows what section 14 is all about. It provides an avenue for the secured creditor, when faced with resistance by the borrower or anyone else, or when the borrower simply refuses to surrender possession, to seek administrative assistance of the CMM/DM to facilitate taking of possession of a secured asset and/or documents in relation thereto to ultimately enable the secured creditor to put up the secured asset for sale and to recover its dues.
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> 72. In view of such understanding based on authoritative decisions of the supreme Court, I am sure the Supreme Court in V. Noble Kumar (supra) never intended to lay down as law declared under Article 136 read with Article 141 of the Constitution that the power exercised by the CMM/DM under section 14 of the SARFAESI Act granting assistance for obtaining possession of the secured asset is the exercise of the judicial power of the State. That this observation does not constitute the ratio of the decision is evident from observations made in paragraph 25 thereof, where it has been clearly held that the legal niceties of the transaction between the secured creditor and the borrower are not to be examined by the CMM/DM. If indeed a lis were involved, it would not be open to the

10 AIR 2015 Calcutta 306

> CMM/DM to say that it would examine factual aspects only and not the legal niceties. Since the CMM/DM does not decide any lis between parties upon receiving evidence from them, the judicial power of the State is not exercised by him."

13. Very recently, the Bombay High Court in the matter of **Bank of Maharashtra, Nagpur v. Additional District Magistrate, Nagpur and others**[11] while dealing with the provisions contained in Sections 14 and 31(i) of the SARFAESI Act in respect of taking possession of secured asset i.e. agricultural land held that the District Magistrate while assisting secured creditor in taking possession of secured asset is not empowered to determine the nature of such asset, he is only duty bound to verify declarations and affidavit tendered by the creditor and pass order of taking actual possession.

14. The SARFAESI Act suffered amendment by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 with effect from 15-1-2013. The Act now requires an affidavit to be filed by the secured creditor, duly affirmed by its authorized officer confirming therein the aggregate amount of financial assistance granted, total claim existing as on the date of filing application, details of properties of the borrower on which security interest has been created, and declaring that the borrower has made a default in repaying the financial assistance, that his account has been classified as an NPA, that notice has been served under section 13(2), that reply has been given under section 13(3A), that the secured creditor is entitled to take steps under section 13(4), and in general that all the provisions of the Act

11 AIR 2017 Bombay 92

and the rules made thereunder have been complied with. Thus, the scope of the affidavit is pervasive.

15. Going further, by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 with effect from 1-9-2016, which amends Section 14 of the Act as to provide timelines – a time period of 30 days has been provided for disposal of applications filed by banks or financial institutions. By amendment, after the second proviso, another proviso has been inserted which states that if no order is passed by the CMM or DM within the said period of 30 days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate 60 days.

16. The second proviso to Section 14(1) of the SARFAESI Act states as under: -

> "Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:"

17. Thus, what is required to be done by the DM/CMM is to satisfy with the contents of the affidavit before passing order under Section 14 of the SARFAESI Act.

18. At this stage, it would be appropriate to notice para 25 of the decision of the Supreme Court in the matter of **Standard Chartered Bank v. V. Noble Kumar and others**[12] which states as

12 (2013) 9 SCC 620

under: -

> "25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset."

19. In **Standard Chartered Bank** (supra) and in aforesaid cases, it has been clearly held that the District Magistrate has no power to adjudicate legal niceties of the transaction between the secured creditor and the borrower.

20. Thus, Section 14 of the SARFAESI Act is an enabling provision which is non-adjudicatory provision and executory in nature. The function of the learned District Magistrate under Section 14 of the Act is non-adjudicatory in nature subject to examination of factual correctness of the assertions made in the affidavit filed under the proviso to Section 14 (1) of the Act as held in **Standard Chartered Bank** (supra).

21. In the instant case, it is only the case of the petitioners that mortgage deed has not been registered in accordance with law therefore, order under Section 14 of the SARFAESI Act could not have been passed.

22. Thus, in my considered opinion, the District Magistrate while considering the application under Section 14 of the SARFAESI Act has rightly held that legal questions raised by the petitioners cannot be decided, on the other hand, the learned District Magistrate has reached to the conclusion that the Bank is entitled for physical possession of the secured assets, after satisfying with the

application and affidavit filed by the Bank in which I do not find any jurisdictional error.

23. In the result, the writ petition sans merit and is accordingly dismissed leaving the parties to bear their own costs. However, the petitioners are at liberty to avail the remedy available under Section 17 of the SARFESI Act, if so desired.

Sd/-
(Sanjay K. Agrawal)
Judge

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