AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1705 of 2017

Order reserved on: 24-8-2017

Order delivered on: 6-9-2017

Smt Polly Chakraborty, W/o Dr. A. Chakraborty, aged 40 years, R/o F-6, B-2, 3rd Floor, Shriram Towers, Vyapar Vihar, Bilaspur, PS Civil Line, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

Chhattisgarh Rajya Sahkari Bank Maryadit, B.D.A. Building, Nehru Chowk Branch, Bilaspur, Tehsil and District Bilaspur (C.G.), Through Authorized Officer/Branch Manager

---- Respondent

For Petitioner: Mr. Saleem Kazi, Advocate.
For Respondent: Mr. Aishwarya Pandey, Advocate.

AND

Writ Petition (Art. 227) No.345 of 2017

(Arising out of order dated 3-7-2012 passed by the Chief Judicial Magistrate, Bilaspur in Misc. Criminal Case No.6/2012)

Chhattisgarh Rajya Sahkari Bank Maryadit, B.D.A. Building, Nehru Chowk Branch, Bilaspur, Tahsil and District Bilaspur (C.G.), through Branch Manager, Chhattisgarh Rajya Sahkari Bank Maryadit, Branch Bilaspur (C.G.) (Applicant)

---- Petitioner

Versus

Smt. Poly Chakraborty, W/o Dr. A. Chakraborty, R/o B-2, Third Floor, Shri Ram Tower, Vyapar Vihar, Bilaspur, Tahsil and District Bilaspur (C.G.) at present R/o Central Mine Planning and Digging Institute Ltd., SECL Complex, Seepat Road, Bilaspur (C.G.) (Non-applicant)

---- Respondent

For Petitioner: Mr. Aishwarya Pandey, Advocate.
For Respondent: Mr. Saleem Kazi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and fact is involved in these two writ petitions, both the writ petitions were clubbed together and they were heard together and are being disposed of by this common order.

2. The Chhattisgarh Rajya Sahakari Bank Maryadit / secured creditor made an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') for taking possession of secured assets before the Chief Judicial Magistrate and the Chief Judicial Magistrate by its order dated 3-7-2012 rejected the said application finding no merit. The said Bank being aggrieved by the order rejecting its application filed a revision application under Section 397 read with Section 399 of the Code of Criminal Procedure, 1973 before the Court of Sessions, Bilaspur and the Court of Sessions by its order dated 24-5-2013 granted that application by allowing the revision application and remanded the matter for hearing afresh. W.P.(Cr.)No.78/2013 was filed by the borrower before this Court, the said writ petition came-up for hearing on 18-4-2017 and the same was allowed holding that revision before the Court of Sessions was not maintainable and writ petition under Article 226/227 of the Constitution of India was maintainable against the order granting application under Section 14 of the SARFAESI Act. Thereafter, the Bank has preferred W.P.

(Art. 227) No.345/2017 challenging the order of the learned Chief Judicial Magistrate rejecting the application under Section 14 of the SARFAESI Act, whereas, the borrower has preferred W.P.(C) No.1705/2017 stating that after the revision application was allowed by the Court of Sessions, the secured creditor / Bank has taken possession of secured assets from the borrower, therefore, the same be directed to be returned to the borrower.

3. Notices have been issued and both the parties are represented.

4. Mr. Aishwarya Pandey, learned counsel appearing for the secured creditor / Bank, submits that the learned Chief Judicial Magistrate is absolutely unjustified in rejecting the application, as the respondent Bank has filed affidavit complying with the provisions of Section 13(3-A) of the SARFAESI Act and therefore the order of the Chief Judicial Magistrate be set aside and since possession has already been taken, therefore, the Bank be allowed to continue with the possession.

5. Mr. Saleem Kazi, learned counsel appearing for the borrower, would submit that the Chief Judicial Magistrate under Section 14 of the SARFAESI Act is not empowered to entertain the application and it is only the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets or other documents relating thereto may be situated or found, to take possession thereof. The Chief Metropolitan Magistrate has jurisdiction in metropolitan cities and since Bilaspur is not a metropolitan city, therefore, the District Magistrate is empowered to

exercise that power. Therefore, the learned Chief Judicial Magistrate who has though rejected the application on different ground, but that order deserves to be maintained on this ground.

6. On the other hand, Mr. Pandey, learned counsel for the secured creditor / Bank, would submit that the Chief Judicial Magistrate has jurisdiction to entertain the said application in view of the order passed by this Court in the matter of **Deepak Panch and another v. Sent Bank Home Finance Limited and others**[1].

7. I have heard learned counsel for the parties and considered their rival submissions and also gone through the records with utmost circumspection.

8. In order to appreciate the submissions raised on behalf of the parties, it would be appropriate to notice Section 14 of the SARFAESI Act.

> "**14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset**.—(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

1 AIR 2011 Chhattisgarh 32

(b) forward such asset and documents to the secured creditor.

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this 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:
>
> Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.
>
> (1-A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—
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> (i) to take possession of such assets and documents relating thereto; and
>
> (ii) to 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 or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

9. The question as to whether the Chief Judicial Magistrate can be approached in non-metropolitan areas came up for consideration before a Full Bench of the Madras High Court in the matter of **K. Arockiyaraj v. Chief Judicial Magistrate, Srivilliputhur and another**[2] in which the Full Bench has held that under Section 14 of the SARFAESI Act, the secured creditors can approach the Chief

2 AIR 2013 Madras 206

Metropolitan Magistrate in metropolitan areas and in non-metropolitan areas, secured creditors have to approach District Magistrate, and not the Chief Judicial Magistrate. Reference to the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act does not include Chief Judicial Magistrate in non-metropolitan areas. The Full Bench overruled its earlier decision in the matter of **Indian Overseas Bank v. Sree Aravindh Steels Ltd.**[3] and held as under: -

> "26. Section 14 of the Act is very clear and unambiguous. It states that the Chief Metropolitan Magistrate or the District Magistrate can assist the secured creditors in taking possession of the secured assets. It means, in metropolitan areas, the secured creditors can approach either the Chief Metropolitan Magistrate or the District Magistrate and in non-metropolitan areas, where there is no Chief Metropolitan Magistrate, the secured creditors can seek the assistance of the District Magistrate alone, as no power is vested on the Chief Judicial Magistrate to give assistance to the secured creditors in non-metropolitan areas. There is no omission in the said section as contended by the learned Senior Counsel for the respondents. If there is no authority mentioned to assist the secured creditor in non-metropolitan areas, the secured creditors may be justified in contending that in case of omission, the meaning given in Cri.P.C. can be imported for the effective implementation of the SARFAESI Act. The said situation being not there, the learned Senior Counsel for the respondent is not justified in contending that wherever there is no Chief Metropolitan Magistrate, the Chief Judicial Magistrate will automatically get the powers to assist the secured creditors. If such an interpretation is accepted, the phraseology used in section 14 that Chief Metropolitan Magistrate or District Magistrate will have no meaning.
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> 27. It is a well settled principle of law that while interpreting the words used in a legislation or parliamentary enactment, the intention of the legislature is to be borne-in-mind. The Act was

3 (2009) 1 Mad LJ (Cri) 416

enacted in the year 2002. The legislature was aware of the fact that in non-metropolitan areas, the Chief Judicial Magistrates function like Chief Metropolitan Magistrates in Metropolitan areas. If the intention of the Parliament is to confer power to the Chief Judicial Magistrate in non-metropolitan areas also, the same should have been specifically stated in section 14 itself. The legislature purposely not included the Chief Judicial Magistrate in section 14 to give assistance to the secured creditors in non-metropolitan areas. The said view was taken by the Aurangabad Bench of the Bombay High Court in the decision reported in CDJ 2008 BHC 520. Section 14(1) clearly states that Chief Metropolitan Magistrate or District Magistrate may on such request being made to assist taking of possession of such assets and documents to the secured creditors, which the secured creditor is entitled to take possession, referable to section 13(4). In the said judgment it is held that the legislature does not seem to have entrusted the functions to the Chief Judicial Magistrate in non-Metropolitan Areas, although such function has been entrusted to the Chief Metropolitan Magistrate, a Judicial Officer in metropolitan areas.

35. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the secured creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the secured creditors can approach the Chief Metropolitan Magistrate in Metropolitan areas and in non-metropolitan areas, the secured creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate."

10. The decision of the aforesaid Full Bench of the Madras High Court has further been relied upon by the same High Court in the matter of **<u>T.C. Ramadoss and another v. The Chief Manager and Authorised Officer, State Bank of India, Chennai and others</u>**[4] wherein Satish K. Agnihotri, J, as then His Lordship was, speaking for the Division Bench, while following the decision in **<u>K. Arockiyaraj</u>** (supra) held that the legislators have made it clear that

4 AIR 2015 Madras 67

in any area other than a metropolitan area, the District Magistrate of the concerned area will have jurisdiction to exercise power under Section 14 of the Act, 2002, but, in metropolitan area, it is only the Chief Metropolitan Magistrate, who has the jurisdiction to exercise power under Section 14 of the Act, 2002. The Division Bench further held in para 10 as under: -

> "10. The aforestated provision is plain, unambiguous and admits no confusion. In a metropolitan area, the Chief Metropolitan Magistrate has the jurisdiction and in areas other than a metropolitan area, the District Magistrate has the jurisdiction. As such, there is a clear prescription that 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, as the case may be, shall exercise jurisdiction. There is no dispute that the property in question is situate within the jurisdiction of Vellore District. Vellore is not a part of a metropolitan area. As such, there is no Chief Metropolitan Magistrate to exercise Magisterial jurisdiction."

11. The Bank / secured creditor, in support of its submission, has relied upon the decision of the Kerala High Court in the matter of **Muhammed Ashraf and another v. Union of India and others**[5] which the Full Bench of the Madras High Court has dissented. I am in respectful agreement with the view taken by the Madras High Court and respectfully disagree with the view taken by the Kerala High Court in **Muhammed Ashraf** (supra).

12. The next decision relied upon by the Bank / secured creditor is W.P.(C)No.7047/2009 (Cent Bank Home Finance Limited v. Ballu Ram Yadav and another) decided on 10-3-2010 by a coordinate

5 AIR 2009 Kerala 14

Bench of this Court. That decision is of no help to the Bank as in that case, the question involved in these petitions is neither an issue or was considered. Therefore, the writ petition filed by the secured creditor / Bank challenging the rejection of its application under Section 14 of the SARFAESI Act deserves to be dismissed, though for different reason and it is held that the Chief Judicial Magistrate has no jurisdiction to entertain the application under Section 14 of the SARFAESI Act and the application under Section 14 of the said Act was not maintainable before the Chief Judicial Magistrate, as Raipur is not a metropolitan area. Accordingly, **Writ Petition (Art. 227) No.345/2017** filed by the secured creditor / Bank is hereby dismissed. However, this order will not bar the Bank / secured creditor to proceed in accordance with law.

13. This would bring me to the writ petition filed by borrower Smt. Polly Chakraborty, **W.P.(C)No.1705/2017**.

14. The Bank / secured creditor challenged the order of rejection of its application under Section 14 of the SARFAESI Act before the Court of Sessions and the Court of Sessions allowed the same by its order dated 24-5-2013 against which Smt. Polly Chakraborty preferred a writ petition before this Court and that writ petition has been considered and the order passed by the Court of Sessions has been set aside. Since the order of the learned Additional Sessions Judge has been set aside in W.P.(Cr.)No.78/2013 and the writ petition filed by the Bank / secured creditor challenging the rejection of its application under Section 14 of the SARFAESI Act,

has been dismissed by this order, and since possession of the borrower's land has been taken pursuant to the grant of revision application by the Court of Sessions which stands set aside by this Court in writ petition filed by Smt. Polly Chakraborty, the consequence would be, the borrower would be entitled for restoration of possession of her subject property which the Bank has taken pursuant to the grant of application under Section 14 of the SARFAESI Act. Thus, it is directed that the Bank / secured creditor will deliver back the possession of subject property to Smt. Polly Chakraborty within ten days from the date of receipt of a copy of this order.

15. As a fallout and consequence of aforesaid discussion, W.P. (Art. 227) No.345/2017 filed by the secured creditor / Bank is hereby dismissed whereas, W.P.(C)No.1705/2017 filed by Smt. Polly Chakraborty – borrower is hereby allowed in the terms indicated herein-above, leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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