

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.78 of 2013

Smt. Polly Chakraborty, W/o Dr. A. Chakraborty, aged about 43 years, R/o B-2, Third Floor, Shri Ram Tower, Viyapar Vihar, P.S. Civil Lines, Bilaspur, Tahsil & District Bilaspur (C.G.)

---- Petitioner

Versus

Chhattisgarh Rajya Sahkari Bank Maryadit, B.D.A. Building, Nehru Chowk, Branch Bilaspur, Tahsil & District Bilaspur (C.G.) Through Authorized Signatory Shri Alexender Kindo, Branch Manager.

---- Respondent

For Petitioner: Mr. Salim Kazi, Advocate.

For Respondent: Mr. Aishwarya Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/04/2017

1. The Chhattisgarh Rajya Sahkari 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 the possession of secured assets before the Chief Judicial Magistrate, Bilaspur. The learned Chief Judicial Magistrate by its order dated 3-7-2012 rejected the said application finding no merit. The said Bank being aggrieved against the order rejecting its application filed a review application under Section 397 read with Section 399 of the CrPC before the Court of Sessions. The Court of Sessions by its order

dated 24-5-2013 granted that application by allowing the review and remanded the matter for hearing afresh. Questioning the order of the 4th Additional Sessions Judge, Bilaspur, the instant writ petition has been filed.

2. Mr. Saleem Kazi, learned counsel appearing for the petitioner, would submit that the order passed by the learned Chief Judicial Magistrate under Section 14 of the SARFAESI Act rejecting the application of the secured creditor for assisting in taking possession of secured assets, was final in view of Section 14 (3) of the SARFAESI Act and that order was only amenable to the writ jurisdiction of this Court under Article 226/227 of the Constitution of India and therefore the order passed by the learned Additional Sessions Judge is absolutely without jurisdiction and without authority of law.
3. Mr. Aishwarya Pandey, learned counsel appearing for the secured debtor would support the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions and also gone through the record with utmost circumspection.
5. Admittedly, the application under Section 14 of the SARFAESI Act was rejected by the learned Chief Judicial Magistrate against which revision under Section 397 read with Section 399 of the CrPC was entertained and was allowedly partly remanding the matter to the Chief Judicial Magistrate for deciding afresh. Now,

the question would be whether the learned Additional Sessions Judge had acted with jurisdiction or without jurisdiction.

6. Section 14 (3) of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. Thus, Section 14 (3) attaches finality to the order passed by the Chief Judicial Magistrate or the District Magistrate, as the case may be. But, that statutory provision would not take away the jurisdiction of this Court under Article 226/227 of the Constitution of India.
7. Section 14 (3) of the SARFAESI Act came-up for consideration before the Supreme Court in the matter of **Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and others**¹ in which Their Lordships of the Supreme Court considered the earlier decision of the Supreme Court in the matter of **Columbia Sportswear Co. v. Director of Income Tax**² and held that the order of the Chief Judicial Magistrate or the District Magistrate, as the case may be, can be questioned before the High Court under Article 226/227 of the Constitution of India by the aggrieved party, and observed as under: -

“29. Sub-section (3) of Section 14 of the SARFAESI Act provides that 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 Section 14 shall be called in question in any court

1 (2014) 6 SCC 1

2 (2012) 11 SCC 224

or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in *Columbia Sportswear Co. v. Director of Income Tax* (supra): (SCC p. 234, para 17)

“17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245-S of the Act insofar as it makes the advance ruling of the authority binding on the applicant, in respect of the transaction and on the Commissioner and Income Tax Authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the authority.”

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.”

8. Applying the law laid down by the Supreme Court in **Harshad Govardhan Sondagar** (supra) and in view of the provisions contained in Section 14 (3) of the SARFAESI Act, it is quite vivid

that the order passed by the Chief Judicial Magistrate was only amenable to the jurisdiction of this Court under Article 226/227 of the Constitution of India as such, the learned Additional Sessions Judge has no jurisdiction and authority to entertain the revision petition against the order passed under Section 14 of the SARFAESI Act.

9. As a fall out and consequence of the aforesaid discussion, the order passed by the learned Additional Sessions Judge in Criminal Revision No.205/2012, dated 24-5-2013 is hereby quashed.

10. The petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge