THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION NO.9603 OF 2015

O R D E R
(*Per Sri Justice Sanjay Kumar)*

The State Bank of Hyderabad, Subash Nagar Branch, Nizamabad, filed this writ petition assailing the proceedings dated 23.12.2014 of the Collector and District Magistrate, Nizamabad, putting on hold his earlier order dated 15.11.2014 passed in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'). A consequential direction was sought to the Tahsildar, Nandipet Mandal, Nizamabad District, to hand over physical possession of the secured assets.

M/s. Venkateshwara Binny Rice Mill, Thondakur Village, Nandipet Mandal, Nizamabad District, the fifth respondent, availed credit facilities in the form of working capital and a term loan from the State Bank of Hyderabad. The land and the building in which the fifth respondent's rice mill was housed, belonging to Ch.Krishnamurthy, its sole proprietor, and his wife, along with the residential house owned by Ch.Krishnamurthy, were offered as security for these facilities extended by the bank.

The loan account of the fifth respondent was classified as a non-performing asset on 09.05.2014 as per the guidelines issued by the Reserve Bank of India owing to default in repayment. The bank therefore invoked the provisions of the SARFAESI Act and issued demand notice dated 12.05.2014 under Section 13(2) thereof calling upon the fifth respondent to pay the outstanding dues of

Rs.1,18,94,349/- within 60 days. Upon non-compliance, possession notice dated 12.07.2014 was issued under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for brevity, 'the Rules of 2002') and the same was published in the newspapers on 20.07.2014.

However, the property mortgaged to the bank was attached by the Tahsildar, Nandipet Mandal, Nandipet, Nizamabad District, for non-payment of amounts by the fifth respondent to the A.P. State Civil Supplies Corporation (Telangana Division) in connection with custom milling of paddy. The bank addressed letter dated 30.07.2014 to the Tahsildar requesting him to handover possession of the secured assets so as to enable it to recover its dues. However, the A.P. State Civil Supplies Corporation Limited (Telangana Division), Nizamabad, put up a rival claim for recovery of Rs.44,23,010/- and sought to auction the very same properties for that purpose.

The bank thereupon made an application under Section 14 of the SARFAESI Act to the Collector and District Magistrate, Nizamabad, supported by relevant documents. After considering the same, the Collector and District Magistrate, Nizamabad, issued order dated 15.11.2014 directing the Tahsildar, Nandipet Mandal, to take physical possession of the secured assets detailed therein and to hand over the same to the Authorized Officer of the bank. However, the Tahsildar failed to comply with the said order despite the fact that the bank had issued e-auction notice dated 22.12.2014 fixing the date of sale of the secured assets as 28.01.2015. While so, the Collector issued the impugned proceedings dated 23.12.2014 informing the bank that the Tahsildar, Nandipet Mandal, was directed to recover a sum of Rs.44,23,010/- under the Revenue Recovery Act towards the losses suffered by the A.P. State Civil

Supplies Corporation (Telangana Division), Nizamabad, and that he had therefore put on hold his earlier order dated 15.11.2014.

In the auction held on 28.01.2015 pursuant to the auction notice dated 22.12.2014, the bank sold the property of the guarantor, the wife of Ch.Krishnamurthy, and the auction purchaser deposited the entire sale consideration. However, owing to the impugned proceedings dated 23.12.2014, the bank stated that it was not in a position to handover physical possession of the property sold though the Civil Supplies Corporation had no claim over the said item of property. The bank contended that the Collector did not have the right to withhold or pass any further orders in relation to his earlier order dated 15.11.2014 under Section 14 of the SARFAESI Act and that the remedy for any person aggrieved by such order was to invoke Section 17 of the SARFAESI Act before the jurisdictional Debts Recovery Tribunal.

In its counter, the Civil Supplies Corporation stated as under: As per the inspection conducted by the authorities in relation to the milling of paddy supplied, the fifth respondent was due and liable to pay a sum of Rs.44,23,010/-. A criminal case was also registered against it in this regard. The Tahsildar, Nandipet Mandal, attached and seized the properties of the fifth respondent under the provisions of the Revenue Recovery Act. As regards the claim put up by the bank, the Corporation stated that the properties of the fifth respondent had been attached by the Tahsildar prior to the application of the bank under Section 14 of the SARFAESI Act and therefore, the bank could not claim a first charge. The Corporation therefore justified the action of the Collector and District Magistrate, Nizamabad, in putting on hold the order dated 15.11.2014 passed under Section 14 of the SARFAESI Act for delivery of possession of the secured assets to the bank as the properties had been attached and seized by the Tahsildar as long back as on 08.01.2013.

In his counter, the District Collector, Nizamabad, sought to explain his proceedings dated 23.12.2014 keeping on hold his earlier order dated 15.11.2014 on the ground that proceedings had been initiated under the Revenue Recovery Act in relation to the loss sustained by the Government to the tune of Rs.44,23,010/-. He further stated that it was for the bank to approach the Government to seek redressal of its grievance.

Heard Sri A.Krishnam Raju, learned counsel for the petitioner bank, and Sri A.Jagan, learned standing counsel for the Civil Supplies Corporation.

Though the question as to whether the bank would have priority over the Government for recovery of its dues was raised in the pleadings, challenge in the writ petition is only to the proceedings dated 23.12.2014 issued by the Collector and District Magistrate, Nizamabad, putting on hold his earlier order dated 15.11.2014 directing delivery of possession of the secured assets in exercise of power under Section 14 of the SARFAESI Act. Therefore, the only issue that arises for consideration in this writ petition is whether the Collector and District Magistrate, Nizamabad, had the power to do so.

Sri A.Jagan, learned counsel, would rely upon ***KARUR VYSYA BANK LIMITED, WARANGAL V/s. STATE OF TELANGANA***[1], wherein a Division Bench of this Court was also dealing with a case where the Civil Supplies Corporation had taken possession of a rice mill and the stocks stored therein in relation to its dues for milling of paddy. Steps

[1] 2017(1) ALD 245 (DB) = 2016(6) ALT 457 (DB)

were initiated for sale of the stocks stored in the mill. Meanwhile, the bank, which had a security interest over the property of the mill pursuant to the mortgage created in its favour, approached the Chief Judicial Magistrate, Karimnagar District, under Section 14 of the SARFAESI Act and secured an order to deliver possession of the secured asset to it. Relying on ***CENTRAL BANK OF INDIA V/s. STATE OF KERALA***[2], the Division Bench opined that the dues claimed by the Government would prevail over the bank's dues. On that ground, the order dated 21.07.2015 in Crl.M.P.No.132 of 2015 passed by the Chief Judicial Magistrate, Karimnagar, was set aside.

This judgment is however of no relevance as the situation obtaining presently is wholly dissimilar giving rise to an entirely different question for consideration. As already noted *supra*, the Collector and District Magistrate, Nizamabad, had already exercised power under Section 14 of the SARFAESI Act and issued the order dated 15.11.2014 directing the Tahsildar, Nandipet Mandal, to take over the possession of the secured assets and deliver the same to the bank. The question that requires to be answered is whether he had the power to put on hold this earlier order.

This issue is no longer *res integra.*

In ***PHOENIX ARC PRIVATE LIMITED V/s. METROPOLITAN CRIMINAL COURTS***[3], this very issue fell for consideration, as in that case also the Magistrate concerned, having passed an order under Section 14 of the SARFAESI Act, thereafter restrained the Advocate-Commissioner appointed by him from executing the warrant of possession issued earlier. Relying on case law, a Division Bench of this Court held that the Chief Metropolitan Magistrate/District

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[2] (2009) 4 SCC 94
[3] 2016 SCC OnLine Hyd 148

Magistrate, in exercise of power under Section 14 of the SARFAESI Act, is only required to undertake factual examination of the entitlement of a secured creditor to take possession in terms of the provision and beyond determining this fact on the basis of an affidavit and the documents placed on record, the Magistrate concerned is not empowered to undertake any sort of adjudicatory process. It was further held that, being an administrative functionary in the scheme of Section 14 of the SARFAESI Act, the Chief Metropolitan Magistrate/District Magistrate has no right to review the order passed earlier, as no such power is conferred upon him under the SARFAESI Act. It was observed that if an erroneous order is passed by the Chief Metropolitan Magistrate/District Magistrate in exercise of the administrative power conferred by Section 14 of the SARFAESI Act, the remedy against the same is only by way of an application under Section 17 of the SARFAESI Act to the Debts Recovery Tribunal concerned. The Chief Metropolitan Magistrate was therefore held to have no right to keep further proceedings pursuant to his earlier order passed under Section 14 of the SARFAESI Act in abeyance, while seeking to exercise the power of review.

The case on hand falls squarely within the four corners of the *ratio* laid down in the aforestated decision. Having already exercised power under Section 14 of the SARFAESI Act *vide* order dated 15.11.2014, the Collector and District Magistrate, Nizamabad, stood denuded of power to interfere with his earlier order, be it by keeping it on hold or by reviewing it. Any party aggrieved by such order, necessarily had to file an application under Section 17 of the SARFAESI Act. Requesting the Collector to keep his earlier order on hold was not the right remedy for the Civil Supplies Corporation and acceptance of such a request by the Collector, under the proceedings dated 23.12.2014, was completely bereft of the sanction of law.

The writ petition is accordingly allowed on this short ground setting aside the proceedings dated 23.12.2014. It is open to the party aggrieved by the order dated 15.11.2014 passed by the Collector and District Magistrate, Nizamabad, to invoke the statutory remedy available before the jurisdictional Debts Recovery Tribunal in accordance with law. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

GUDISEVA SHYAM PRASAD,J

19th JULY, 2017

PGS