THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.21525 of 2017

ORDER: (per Justice Sanjay Kumar)

The grievance of the petitioner in this case relates to the order dated 28.03.2017 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in Crl.M.P.No.831 of 2017 in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), and the consequential action of the Advocate Commissioner appointed thereunder in taking possession of his flat bearing No.301 situated on the third floor of Mathrusri Nivas, Jambagh, Hyderabad.

Sri C.Raghu, learned counsel representing Sri Penumaka Venkata Rao, learned counsel for the petitioner, would however address arguments on another aspect altogether which may have crucial significance.

The secured creditor in relation to the loan account which has now been classified a non-performing asset was originally the State Bank of India. It was this bank which initiated proceedings under the SARFAESI Act by issuing a demand notice under Section 13(2) thereof on 14.09.2011. Assignment of the petitioner's loan account to M/s.Asset Reconstruction Company (India) Limited, the respondent herein, was only in the year 2014. Pursuant to such assignment, it was the respondent company which issued a possession notice under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, on 13.04.2016. Thereafter, the respondent company initiated measures under Section 14 of the SARFAESI Act before the jurisdictional Metropolitan Magistrate to secure possession of the flat offered by the petitioner as a security interest in relation to his loan account and succeeded.

The aforestated facts demonstrate that the State Bank of India, having initiated measures under the SARFAESI Act as long back as in September, 2011, by requiring the petitioner to repay the outstanding dues of Rs.12,89,988/- due as on 14.09.2011 with further interest within 60 days, chose not to take any steps thereafter.

No doubt, the loan account statement produced by Sri S.Sainathan, learned counsel for the respondent company, would indicate that the petitioner made piecemeal payments not exceeding Rs.15,000/- each on various dates after issuance of the demand notice dated 14.09.2011. However, that was not what was required of the petitioner under the said notice. In the event the State Bank of India was satisfied with the piecemeal payments made by the petitioner and did not choose to take further measures under Section 13(4) of the SARFAESI Act on the strength of the demand notice dated 14.09.2011, it would have the effect of wiping out the said notice for all practical purposes.

Be it noted that in Taher Ahmed Siddiqui v. The Standard chartered Bank[1], this Court considered the impact of delay on the part of the secured creditor in taking requisite measures after issuance of a demand notice under Section 13(2) of the SARFAESI Act within reasonable time. In that case, the demand notice under Section 13(2) of the SARFAESI Act was issued on 13.04.2011 and no steps were taken thereafter under Section 13(4) thereof till 23.11.2015. This delay on the part of the secured creditor was held to be fatal. The writ petition was allowed on that short ground leaving it open to the secured creditor to initiate proceedings afresh under the SARFAESI Act in accordance with the due procedure.

The aforestated ratio would apply on all fours to the case on hand in as much as the State Bank of India, having issued the demand notice as long back as in September, 2011, did not choose to act thereupon and merely assigned the loan account to the respondent company in the year 2014. That being so, it was not open to the respondent company to take further measures under Section 13(4) of the SARFAESI Act pursuant to the demand notice dated 14.09.2011 which had lost its effect by virtue of the acquiescence and waiver on the part of the State Bank of India which kept quiet after the petitioner made piecemeal payments. The measures initiated by the respondent company on the strength of the said demand notice therefore cannot be sustained.

The order dated 28.03.2017 passed by the learned Chief Metropolitan Magistrate, Hyderabad, in Crl.M.P.No.831 of 2017 is accordingly set aside on this short ground. The consequential possession

[1] W.P.No.39673 of 2015 decided on 06.07.2017

taken by the respondent company on the strength of the said order is also rendered illegal. The respondent company shall therefore return the possession of the petitioner's flat within one week from the date of receipt of a copy of this order. This order shall however not preclude the respondent company from initiating measures afresh under the SARFAESI Act for realizing its dues in relation to the petitioner's loan account which has already been classified a non-performing asset. Needless to state, the limitation prescribed under Section 36 of the SARFAESI Act would stand frozen by virtue of these intervening proceedings and would not bar the respondent company from now initiating measures afresh under the SARFAESI Act.

The writ petition is allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 20.12.2017
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