THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Petition No.9516 of 2017

ORDER: (per Hon'ble the Acting Chief Justice Sri Ramesh Ranganathan)

Heard Sri P.S.Rajasekhar, Learned Counsel for the petitioners, and Sri B.Harinath Rao, Learned Counsel appearing on behalf of respondents 1 and 2, and, with their consent, the Writ Petition is disposed of at the stage of admission.

The petitioners herein stood as guarantors to the loan taken by respondents 3 and 4 from the 1st respondent-Bank. After a notice was issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for short), the petitioners put forth their objections under Section 13(3A) of the SARFAESI Act by their letter dated 24.06.2015. The 1st respondent-Bank considered their objections, and rejected the same by proceedings dated 08.07.2015. Thereafter, respondents 1 and 2 filed an application before the Chief Metropolitan Magistrate, Hyderabad, under Section 14 of the SARFAESI Act, requesting him to appoint an Advocate-Commissioner to take possession of the subject property. Alleging that the requirements of Section 14 of the SARFAESI Act has not been complied with, the petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Sri P.S.Rajasekhar, Learned Counsel for the petitioners, would submit that in terms of the proviso to Section 14(1), as inserted by Act 1 of 2013 with effect from 15.01.2013, the applicant-Bank is required to state, by way of an affidavit, that the claim of the bank is within the limitation period; the objections received from the borrower have been considered, and the reasons for non-acceptance has been communicated to the borrower; the affidavit filed by the 1st respondent-Bank does not fulfil these statutory requirements; the Supreme Court, in **Standard Chartered Bank v. V.Noble Kumar**[1], has held that the secured creditor has an obligation to file an affidavit furnishing the information in terms of the proviso to Section 14(1) of the SARFAESI Act; and on this short ground alone, the order passed by the Chief Metropolitan Magistrate, Hyderabad, under Section 14 of the SARFAESI Act, is liable to be set aside.

On the other hand Sri B.Harinath Rao, Learned Counsel appearing on behalf of respondents 1 and 2, would submit that, on a reading of the contents of the affidavit as a whole, it is evident that the claim of the 1st respondent-Bank is within limitation; the mere fact that the bank has not specifically stated that the claim is within the limitation period is of no consequence; no prejudice has been caused to the petitioners by their failure to state that the objections, submitted by the borrower, has been considered and disposed of; and such a technical objection should not weigh with the Court as larger public interest would only be served by ensuring that banks/ financial institutions recover the amounts due to them.

The proviso to Section 14(1) was inserted by Act 1 of 2013 with effect from 15.01.2013 and, thereunder, any application by the secured creditor under Section 14(1) of the SARFAESI Act is required to be accompanied by an affidavit, duly affirmed by the authorised officer of the secured creditor, declaring, among others, that (ii) the borrower had created security interest over various properties, that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties, and the claim of the Bank or

[1] (2013) 9 SCC 620

Financial Institution is within the limitation period; and (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 has been communicated to the borrower.

Section 2(f) of the SARFAESI Act defines 'borrower' to mean any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution. The petitioners herein stood as guarantors for the loan obtained by respondents 3 and 4, and fall within the definition of 'borrower' under Section 2(f) of the SARFAESI Act. The fact that they submitted their objections under Section 13(3A) on 24.06.2015, and the 1st respondent-Bank had rejected the same on 08.07.2015, is not in dispute.

The only question which necessitates examination is whether failure of respondents 1 and 2 to comply with the requirements, of clauses (ii) and (vii) of the proviso to Section 14(1) of the SARFAESI Act, necessitate the impugned order, passed by the Chief Metropolitan Magistrate, Hyderabad on 19.01.2017, to be set aside.

In **Standard Chartered Bank**[1] the Supreme Court noted that the proviso to Section 14(1) required the secured creditor, who is seeking the intervention of the Magistrate under Section 14, to file an affidavit furnishing the information contemplated under clauses (i) to (ix) of the proviso; it obligated the Magistrate to pass suitable orders regarding taking possession of the secured assets only after being satisfied with the contents of the affidavit; the satisfaction of the Magistrate, contemplated under the proviso to Section 14(1), required the Magistrate to examine the factual correctness of the assertions made in such an affidavit, but not the legal niceties of the transaction; and it is only after recording his satisfaction, could the Magistrate pass appropriate orders regarding taking possession of the secured asset.

It is only if the information, stipulated under clauses (i) to (ix) of the proviso to Section 14(1), is furnished by the secured creditor, would the Magistrate be in a position to satisfy himself of the contents of such an affidavit. Admittedly, in the present case, the requirements of clauses (ii) and (vii) of the proviso to Section 14(1) has not been complied with. Failure on the part of the 1st respondent-Bank to furnish the said information has resulted in the Chief Metropolitan Magistrate, Hyderabad not being furnished the required information necessary for him to arrive at his satisfaction as to whether or not an order, under Section 14 of the SARFAESI Act, should be passed.

While we were initially inclined to admit the Writ Petition and grant stay of all further proceedings, Sri B.Harinath Rao, Learned Counsel appearing on behalf of respondents 1 and 2, would fairly state that, instead, this Court may consider granting liberty to respondents 1 and 2 to make an application under Section 14 of the SARFAESI Act afresh, after fulfilling the conditions stipulated under Section 14(1) and its proviso. Sri P.S.Rajasekhar, Learned Counsel for the petitioners, expresses no objection to such an order being passed.

We consider it appropriate, therefore, to set aside the order impugned in this Writ Petition, granting liberty to respondents 1 and 2 to make an application afresh under Section 14 of the SARFAESI Act, and to file an affidavit along with the said application furnishing the information stipulated in clauses (i) to (ix) of the proviso to Section 14(1) of the SARFAESI Act.

The Writ Petition is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

Dr.SHAMEEM AKTHER, J

Date:28.03.2017.

Note:
Issue C.C. by 31.03.2017.
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