HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.11907 OF 2017

ORDER: (*Per* Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The only contention urged in challenge to the proceedings issued by the District Magistrate, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), is that it is the Authorized Officer who issued the impugned proceedings dated 21.03.2017 directing the petitioners to vacate the subject property, and not any officer subordinate to the District Magistrate, East Godavari District. Reliance is placed by Sri P.S. Rajasekhar, learned counsel for the petitioners, on a Full Bench judgment of this Court in ***T.R. Jewellery Vs. State Bank of India, Vedayapalem Branch, Nellore and another***[1] in this regard.

Facts, to the limited extent necessary, are that the petitioners obtained a loan from the 1st respondent-bank which was disbursed to them on 30.12.2010, on certain properties being offered as security for the loan. The petitioners failed to repay the loan resulting in their account being declared as a Non Performing Asset (NPA) on 05.08.2013. The authorized officer of the 1st respondent-bank issued a notice under Section 13(2) of the SARFAESI Act demanding payment of Rs.2,72,33,447/- from the 1st petitioner, Rs.2,93,45,554/- from the 2nd petitioner, Rs.2,72,33,447/- and Rs.2,93,45,554/- from the 3rd petitioner and Rs.2,72,33,447/- from the 4th petitioner. The petitioners claim to have sought a one-time settlement of their loan by way of their representation dated 09.02.2014; and the 2nd

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[1] 2016 (2) ALT 226

respondent is said to have issued letter dated 24.02.2014 accepting their request but with certain conditions, which the petitioners claim not to be in a position to fulfil. A possession notice dated 19.12.2014 was issued under Section 13(4) of the SARFAESI Act and, thereafter, the 2nd respondent issued notice dated 21.03.2017 to the 4th petitioner to vacate the house property within a period of fifteen (15) days.

It is the petitioners' case that, on enquiry, they came to know that the 2nd respondent had approached the 3rd respondent submitting an application under Section 14 of the SARFAESI Act on 11.02.2015; and the 3rd respondent had, by proceedings dated 28.07.2015, appointed the 4th respondent to take possession of the property offered by the petitioners as security.

By his proceedings dated 28.07.2015, the Collector and District Magistrate, East Godavari exercised jurisdiction under Section 14 of the SARFAESI Act, and directed the Tahsildar, Thondangi and Kakinada Rural to take possession of the schedule property of the borrower by conducting a panchanama; and to hand it over to the bank authorities.

Sri P.S. Rajasekhar, learned counsel for the petitioners, would submit that, while possession could have been delivered by the Tahsildar, who was an officer subordinate to the District Magistrate, it is not open to the authorized officer, based on the proceedings passed by the District Collector under Section 14 of the SARFAESI Act, to call upon the petitioners to deliver possession of the subject property.

As reliance is placed by the petitioners, on the Full Bench judgment of this Court in ***T.R. Jewellery***[1], it is necessary to examine the law declared therein. The question referred to the Full Bench in ***T.R. Jewellery***[1] was

"Whether the Chief Judicial Magistrate exercising his jurisdiction in Corporation area can assist secured creditor in taking possession of secured asset and pass an order in favour of secured creditor for the purpose of taking possession or control of any secured asset?"

The question referred to the Full Bench was whether, in a Metropolitan area, the Chief Judicial Magistrate could exercise the power conferred under Section 14 of the SARFAESI Act, though Section 14(1) of the SARFAESI Act stipulates that possession of a secured asset can be directed to be delivered by a Chief Judicial Magistrate or the District Magistrate within whose jurisdiction the secured asset, or the other documents relating thereto, are situated. The 'District Magistrate', referred to in Section 14(1) of the SARFAESI Act, is the District Collector, and the 'Chief Judicial Magistrate' referred to therein is a Judicial Officer.

Unlike in ***T.R. Jewellery***[1], where the contention was whether a Chief Judicial Magistrate could pass orders under Section 14 of the SARFAESI Act, in the present case, the order under Section 14 of the SARFAESI Act was passed not by a Judicial Magistrate, but by the District Magistrate himself. The fact that the District Magistrate has the power to pass such an order, under Section 14, has not even been disputed before us. The observations in ***T.R.Jewellery***[1], on which reliance is placed, read thus:

> "……A reading of the Section 14 of the Act would show that where the possession of any secured asset is required to be taken by a secured creditor or if secured asset is required to be sold or transferred by the secured creditor, the secured creditor may, for the purpose of taking possession or control of such secured asset, shall request, in writing, the Chief Metropolitan Magistrate or the District Magistrate as the case may be within whose jurisdiction such secured asset or other documents relating thereto may be situated or found, to take possession thereof. Amended Act 1 of 2013 inserted to Section 14 contemplates delegation of power by Chief Metropolitan Magistrate or District Magistrate to any officers subordinate to them to take possession of such assets and documents thereto and forward the same to the secured creditor."

In the aforesaid judgment the Full Bench has merely referred to Section 14(1A) of the SARFAESI Act which provides for the delegation of powers by the Chief Metropolitan Magistrate or the District Magistrate to any officer subordinate to them to take possession of such assets, and other documents, and to forward them to the secured creditor.

Section 14 of the SARFAESI Act, as noted hereinabove, confers power on the District Magistrate to assist the secured creditor in taking possession of the secured asset. Under sub-section(1) thereof, where possession of the secured asset is required to be taken by the secured creditor, or if any secured asset is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request the District Magistrate, within whose jurisdiction such secured asset is situated, to take possession; and the District Magistrate shall, on such request being made to him, take possession of such asset and documents relating thereto.

While Section 14(1) enables the District Magistrate to take possession of the assets and documents himself, Section 14(1A), which was inserted by Act 1 of 2013 with effect from 15.01.2013, confers power on the District Magistrate (1) to authorize any officer subordinate to him to take possession of such assets, and documents relating thereto; and (2) to forward such assets and documents to the secured creditor.

It is no doubt true that Section 14(1A) confers power on the District Magistrate to authorise any officer subordinate to him to take possession. However, as noted hereinabove, the power conferred under Section 14, on the District Magistrate, is to assist the secured creditor in taking possession of the secured asset. Section 14 and 14(1-A) confer power on the District

Collector either himself, or through his subordinate, to take possession of the secured asset and forward it to the secured creditor. The object of Section 14 is to ensure that the secured asset is delivered to the secured creditor. The mere fact that, in the present case, the impugned proceedings dated 21.03.2017 was issued by the authorized officer informing the petitioner that they would like to proceed further with the sale of the property, as per the provisions of the SARFAESI Act, for realization of the bank dues, and in requesting them to vacate the property within fifteen (15) days, would not justify our interference in proceedings under Article 226 of the Constitution of India. It matters little, whether the District Magistrate or his subordinate take possession of the assets and deliver it to the secured creditor, or the secured creditor itself requests the petitioner to deliver possession of the subject property. In either event, the petitioners are obligated to deliver possession of the subject property which is eventually required to be delivered to the secured creditor.

The discretionary jurisdiction of this Court, under Article 226 of the Constitution of India, need not be exercised in every case, even if the impugned order suffers from a technical error. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. (***Sangram Singh Vs. Election Tribunal, Kotah***[2]). Exercise of discretionary power should be for the sake of justice and, if granting relief results in greater harm to the society, the Court may refrain from exercising the power. (***State of Maharashtra Vs. Prabhu***[3]). Discretionary power must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether the intervention of the Court is called for or not.

[2] AIR 1955 SC 425
[3] (1994) 2 SCC 481

(***Master Marine Services Private Limited Vs. Metcalfe and Hodgkinson Private Limited***[4]; ***Air India Limited Vs. Cochin International Airport Limited and others***[5]). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or a substantial question of public importance is involved. (***Rashpal Malhotra Vs. Mrs. Saya Rajput***[6]; ***Council of Scientific and Industrial Research Vs. K.G.S. Bhatt***[7]).

As it is not in dispute that the account of the petitioners has been declared a Non Performing Asset, proceedings under Sections 13(2) and (4) of the SARFAESI Act have already been taken by the 1st respondent-bank, proceedings under Section 14 was instituted as the secured creditor was not able to take possession of the subject property, and as, admittedly, the petitioners have neither paid the amounts due to the 1st respondent-bank nor have they delivered possession of the mortgaged property, we see no reason to interfere or to restrain the 1st respondent-bank from taking possession of the secured asset.

The Writ Petition fails and is, accordingly, dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 12-04-2017.
DSH/SIVA

[4] (2005) 6 SCC 138
[5] 2002 (2) SCC 617
[6] AIR 1987 SC 2235
[7] AIR 1987 SC 1972

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WRIT PETITION No.11907 OF 2017

(Order of the Division Bench delivered by
Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Date. 12-04-2017

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