

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 14403 of 2016

Date of Decision: July 25, 2017

Punjab & Sind Bank and another

.....Petitioners

versus

District Magistrate-cum-Addl. Deputy Commissioner and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDHIR MITTAL**

Present: Mr. Pavan Malik, Advocate for the petitioners.

Ms. Anu Pal, AAG Punjab

Mr. N.C. Sahni, Advocate for respondents No. 3 and 4

Mr. Kanwaljit Singh, Sr. Advocate with

Mr. Abhishek Bajaj, Advocate for respondent No. 6

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Surya Kant, J. (Oral)

(1) The petitioners are Punjab and Sind Bank, Model Town, Jalandhar and its Authorized Officer. They are aggrieved by the order dated 26.05.2016 passed by District Magistrate-cum-Additional Deputy Commissioner, Jalandhar whereby their application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') has been partially allowed directing that only 'symbolic possession' of the secured asset be handed over and the petitioner-bank may sell the same on "as-is-where-is" basis without dispossessing the tenants/occupants except in due process of law.

(2) Some of the undisputed facts are that respondent No. 2 – M/s Richi Developers & Infrastructure Pvt. Ltd. availed a bank guarantee of Rs.3.22 crores from the petitioner-Bank on 17.2.2011, which was duly secured by equitable mortgage of the property measuring 21 kanal 16 marlas by way of four title deeds bearing No.5113 dated 24.10.2002; No.2560 dated 24.07.2002; No. 860 dated

30.04.2002; and No.5333 dated 31.10.2002 registered in the office of Sub Registrar, Jalandhar. The property is situated at village Paragpur within the municipal limits at Jalandhar. The same is owned by respondent No. 3 – Satpal Multani, who is the Managing Director of M/s Richi Developers & Infrastructure Pvt. Ltd.

(3) Even before availing the financial assistance of bank guarantee dated 17.02.2011, the borrowers had mortgaged the same very property with the petitioner-Bank on 22.05.2008 to avail overdraft limit of Rs.2 crore and a car loan of Rs. 35 lacs.

(4) The original title deeds were duly deposited with the Bank. Respondent No. 3 - Managing Director further gave an affidavit (Annexure P-3) that he was owner in possession of the property measuring 436 marlas situated at village Paragpur and ***“the property is not an agricultural property and same is not being used for agricultural purposes”***. The evaluation report was also appended along with photographs of the house and other constructions raised at the site.

(5) As the company failed to repay the debt of almost Rs.3 crores along with interest, its account was classified as NPA on 30.06.2015 and notice dated 19.10.2015 under Section 13(2) of the Act was issued (Annexure P-6) calling upon the borrowers/guarantors to pay the loan amount. Respondent No.3 preferred objections under Section 13(3-A) of the Act, which were duly considered and rejected on 24.12.2015. The petitioners then took 'symbolic possession' of the property in question under Section 13(4) of the Act issued on 30.01.2016.

(6) Thereafter, the Bank applied under Section 14 of the Act to the District Magistrate for taking physical possession of the secured assets and hand over its possession to the Bank. The District Magistrate issued notice of the application to the borrowers. Then came the third party objections filed by respondent No. 6, who claimed himself to be the 'tenant' over the land which was allegedly being used for

(7) It appears that respondent No. 6 had obtained a report from SDO (Civil), which was based upon some enquiry conducted by Tehsildar, Jalandhar, claiming that at the time of spot inspection, respondent No. 6 was found present and he informed that the land was in his cultivating possession and that he was residing in a *Kotha* (room) constructed at the site. The Bank was admittedly not associated in any such enquiry by the Tehsildar. In addition to that, an order of the Civil Court Jalandhar passed in an injunction suit which respondent No. 6 appears to have filed against respondent No.3 was also relied upon by the District Magistrate to hold that since respondent No.6 is in 'possession' of the land and is claiming himself to be a 'tenant', such like question can be determined by the competent Civil Court only. The bank thus be handed over only the symbolic possession to enable it to sell the property on as-is-where-is basis. The aggrieved Bank has approached this Court.

(8) We have heard learned counsel for the parties and gone through the record.

(9) True it is that where the 'secured property' is in lawful possession of a lessee or tenant before it was mortgaged, the secured creditor in purported exercise of his powers under Section 13(4) read with Section 14 of the SARFAESI Act, cannot take physical possession of such secured asset until the lease or tenancy rights are terminated, for there cannot be *ipso facto* termination of a lease-agreement entered into between the borrower and his lessee. Nevertheless, whosoever asserts himself to be in lawful possession of a 'secured asset' is obligated to produce at least a registered instrument like Lease-Deed if the lease period is beyond one year and if such a plea is taken before the District Magistrate, the latter will have to briefly examine whether such a lessee is entitled to retain possession beyond one year when the lease-agreement is not even registered. Similarly, where the borrower has mortgaged his property to the Bank, he cannot lease out it without the prior consent

vs. International Assets Reconstruction Co.Ltd. (2014) 6 SCC 1, and (ii) **Vishal N. Kalsaria vs. Bank of India & Ors. (2016) 3 SCC 762**].

(10) One cannot be oblivious of the fact that the Legislative scheme of SARFAESI Act, as explained in **Mardia Chemicals Ltd. vs. Union of India & Ors. (2004) 4 SCC 311** and catena of other decisions, is that the Statute is meant to facilitate quick recovery of 'secured assets' with travelling through judicial or quasi-judicial processes so as to see such assets and recover the dues. Section 13(4) and if need be, administrative assistance through Section 14 of the Act are the last legs of the summary procedure which does not contemplate observance of principles of natural justice except the objections and their disposal under Section 13(3-A) of the Act. Keeping such legislative intentment of the Act in view, it appears plain and simple that where the Authorised Officer of the Secured Creditor is unable to take possession of the secured asset under Section 13(4) of the Act due to resistance shown by the borrower, he is entitled to proceed under the alternative procedure prescribed under Section 14 of the Act and secure such possession with the assistance of police and District Administration.

(11) It may be further seen from the plain language of Section 14 of the 2002 Act that once a 'secured creditor' submits affidavit of its authorised officer, containing the requisite information comprising points (i) to (ix) of the first *proviso* and establishes the genuineness of its need for assistance, the District Magistrate shall have to “after satisfying the contents of the affidavit” pass suitable orders for the purpose of taking possession of the secured assets. The process of “satisfaction” of the District Magistrate inheres a summary enquiry, if need be in the facts and circumstances of a case, which includes the determination of genuineness of the claim put forth by a stranger who poses himself as a lessee or tenant in the secured premises.

process of satisfying himself, it would have been revealed that (i) the so-called lease deed of 2010 relied upon by respondent No.6 is not a registered document; (ii) the alleged lease deed was executed after the property had been mortgaged to the petitioner-bank in May, 2008 and no permission in regard thereto was obtained from the Bank; (iii) there is no entry in the revenue record of creation of any tenancy rights in favour of respondent No.6 and the revenue record consisting of *jamabandi* and *khasra girdawari* still shows the owner to be in its exclusive possession; (iv) respondent No.3 himself had given affidavit that the land was not being used for agricultural purposes, then how could it be leased out for agricultural activities; (v) the land was within the municipal limits of Jalandhar. Initially it might be an agricultural land but its nature appears to have changed and it was not being used for agricultural purposes as made out from the photographs and the report produced by respondent No.3 for availing the loan facilities; (vi) the Civil Court *ad interim* order in an injunction suit was not an embargo against exercising the powers under Section 14 of the Act; (vii) respondents No.3 and 6 are apparently in collusion with each other and the 'tenancy' was a shield created to deprive the Secured Creditor from its legitimate dues.

(13). The District Magistrate was neither helpless nor could be silent spectator to the objections filed by respondent No.6 and he ought to have gone into the veracity of such claims. In the absence of any cogent evidence to support the plea of tenancy, as keeping in view the settled legal principles, the order passed by the District Magistrate in escaping his responsibility assigned under Section 14 of the Act, thus, has to be annulled.

(14) It is also pertinent to mention here that the same very property was mortgaged for yet another loan account sanctioned in favour of M/s Flywell Oversees (P) Ltd. which is another juristic entity created by respondent No.3. There

the secured asset and its application was allowed by the District Magistrate.

(15) In all fairness, learned counsel for the respondents vehemently contented that the petitioner-bank has got an efficacious alternative remedy to approach the Debt Recovery Tribunal under Section 17 of the Act, hence this Court should not entertain the writ petition. We have considered the submission. In the absence of any serious dispute over facts, complied with the legislative intentment of the SARFAESI Act in providing a summary and quick remedy to a secured creditor, we are not inclined to entertain the objections, more so when the Bank was not relegated to the alternative remedy at the very threshold and the writ petition is pending from last over one year.

(16) For the reasons afore-stated, we are satisfied that the impugned order dated 26.05.2016 passed by the District Magistrate is totally illegal and cannot sustain. The writ petition is, accordingly allowed and the impugned order is set aside. The District Magistrate, Jalandhar is directed to pass a fresh order and take action in accordance with law within a period of one month from the date of receipt of certified copy of this order.

**[SURYA KANT]
JUDGE**

July 25, 2017
vishal shonkar

**[SUDHIR MITTAL]
JUDGE**

**Whether speaking/reasoned : Yes
Whether Reportable : Yes**