IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1527 OF 2018

...

The Cosmos Co-operative Bank Ltd. & Anr. ....Petitioners

V/S

The State of Maharashtra
through Government Pleader & Ors. ....Respondents

...

Mr. A.Y. Sakhare, Senior Counsel a/w Mr. Nikhil Rajani I/b M/s. V. Deshpande & Co. for the Petitioners.
Ms. Jyoti P. Jadhav, AGP for the Respondent Nos.1,2 and 3/State.
Mr. N.N. Bhadrashete for the Respondent Nos.4 and 5.

…

CORAM : A.A. SAYED &
RAVINDRA V. GHUGE, JJ.
DATE : 02 MAY 2018.

ORDER:

1 The challenge in this Petition is to the order dated 3 October 2017 of the Additional District Magistrate rejecting the Application of the Petitioner Bank under section 14 of the SARFAESI Act on the ground that the account was not NPA and is a standard account.

2 The learned Senior Counsel for the Petitioners submitted that the Additional District Magistrate cannot adjudicate the rights between the parties and he is merely rendering assistance for taking possession of the secured asset. The learned Counsel for the Respondent Nos.4 and 5 has

pointed out that the accompanying Affidavit filed by the Petitioner Bank along with the Application is not in accordance with section 14 of the SARFAESI Act.

3 We have heard the learned Counsel for the parties. It is now settled position of law that under section 14 of the SARFAESI Act Chief Metropolitan Magistrate/District Magistrate is only required to satisfy himself that the assertions as required under the proviso to section 14 are made and he is not required to adjudicate on the contents of the Affidavit. This Court in the case of **M/s. Hari Trading Corporation vs. Bank of Baroda, (2015) 3 BC 284 (DB)** has held in paragraphs 15 and 16 as follows:

> *15. The words in italic therefore were not there before section 14 was amended in 2013. In our view, amendment to Section 14 has not changed the character of the application which is made by the secured creditor, seeking assistance of the Magistrate in getting possession of the secured assets. The amendment only seeks to impose further obligation on the Bank (I) to file an application which is duly affirmed by the authorized Officer and (ii) to give the relevant information as provided in clauses (i) to (ix) of the proviso and all that the Magistrate is called upon to do is to check whether this information is supplied or not. In the event, the Magistrate finds that all the information is given in the application under Section 14 then he has no other option but to pass an order allowing the application under Section 14 and in the event he finds that some information is not provided then he has to return the application to the secured creditor and only after all the information is*

provided final order under section 14 will be passed. Much emphasis has been laid on the words "after satisfying the contents of the affidavit" which are found in the amended provision. We are afraid that we are unable to accept the contention raised by the learned Counsels appearing on behalf of the Petitioners viz (i) that the inclusion of these words indicate that the Magistrate has now to adjudicate and decide the correctness or otherwise of the information which is given in the application and (ii) that by virtue of inclusion of these clauses, principal borrower gets right of taking part in these proceedings for the purpose of assisting the Magistrate. It is also not possible to accept the submission that since the section 14(3) contemplates a finality to the orders passed by the Magistrate, the principal borrower does not get any right to point out that the decision of the Bank of declaring the Account of the borrower as non-performing asset is not correct or the measures taken by the Bank are not in accordance with law and, therefore, under Section 14 alone the borrower would get a right to point out to the Magistrate that these measures not being taken properly, the order directing that the possession should be taken cannot be passed without giving hearing to him.

16. … … …

Section 14 clearly contemplates that Chief Metropolitan Magistrate or District Magistrate can pass an order under Section 14 so as to assist the secured creditor to take possession of the secured assets and, if necessary, with the police help. Section 14 therefore is not a stage for adjudication of rights and liabilities between the parties before the Magistrate. Prior to the said amendment, it was a settled position in law that borrower did not have any locus when application under section 14 was filed by secured creditor in the Court of the Chief Metropolitan Magistrate or before the District

Magistrate. Even after amendment to Section 14, no such right, therefore, can be read into the said provision merely because the words "after satisfying the contents of the affidavit" have been used in the proviso to Section 14 after amendment in 2013."

4 In view of the law laid down by the Division Bench of this Court, the learned District Magistrate in the present case was not required to adjudicate the rights between parties as he was merely assisting Petitioner Bank to take possession of the secured assets, and if, necessary with police permission.

5 On perusal of the accompanying Affidavit filed along with Application under section 14 of the SARFAESI Act, it is noticed that the Affidavit does not comply with the proviso to section 14 which sets out that Affidavit should contain 9 clauses as mentioned in the said proviso.

6 In view of the above, the impugned order cannot be sustained and is liable to be set aside. Hence, we pass the following order:

O R D E R

i) The impugned order dated 3 October 2017 of the Additional District Magistrate is set aside.

ii) The Applicant Bank is granted liberty to file a fresh Application before the Additional District Magistrate under section 14 of the SARFAESI Act. If such Application is made, the same shall be decided expeditiously in light of the observations made in this order.

iii) All contentions of the parties are kept open.

7 The Petition is disposed of in the aforesaid terms.

(RAVINDRA V. GHUGE, J.) **(A.A. SAYED, J.)**

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