IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2910 OF 2018

M/s Masscorp. Ltd. & Anr. … Petitioners
V/s.
Cosmos Co.Op. Bank Ltd. Pune & Ors. … Respondents

Mr. Harshad Sathe, Mr. Nilesh Tribhuvann a/w Ms. Alisha Pinto i/b Mr. Ashish Agarkar and Ms. Prerna Sharma for the Petitioners.
Mr. Shirin Shaikh i/b Raval Shah & Co. for Respondent No.1.

CORAM : A.A. SAYED AND
V.L. ACHLIYA, JJ.

DATE : 13th MARCH, 2018.

P.C. :

1 Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act') was amended w.e.f. 15.01.2013 by the Amendment Act 1 of 2013. The first proviso which was inserted in Section 14 of the 'SARFAESI Act w.e.f. 15.01.2013 reads as follows :-

> *"Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor, declaring that -*

"(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(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 had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with."

3 The second proviso which was also inserted in Section 14 of the SARFAESI Act w.e.f. 15.01.2013 reads as follows :-

> *"Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application."*

4 From the aforesaid proviso it would be apparent that not only the Affidavit is required to make the averments as stated in the clauses (i) to (ix) quoted above, but the District Magistrate or the Chief Metropolitan Magistrate is required to satisfy himself with the contents of the Affidavit before passing final orders. It is an admitted position that in the present case, such Affidavit in terms of the aforequoted provisions was not filed before the District Magistrate and Collector before the impugned order dated 18.01.2018 came to be passed by the District Magistrate and Collector. It is noticed that the District Magistrate and Collector while passing the impugned order dated 18.01.2018 has proceeded on the provisions which were pre-amendment and he has relied upon the judgment in the case of *Saraswat Sahakari Bank Ltd. vs. State of Maharashtra & Ors.* (Writ Petition No.4344 of 2011 decided on 28.07.2011) which was passed prior to the insertion of the amended provisions of Section 14 of the

SARFAESI Act. This is also apparent from the observations made by the District Magistrate and Collector in the impugned order which reads as follows:-

> *"District Magistrate has to only verify from the bank or financial institution whether notice under section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. ..."*

5 It is thus seen that not only the Petitioner has not filed the Affidavit in terms of the requirements of the proviso to Section 14 of the SARFAESI Act as amended vide the Amendment Act 1 of 2013, but the District Magistrate and Collector has also proceeded on the basis of the law as it existed prior to 15.01.2013 when the Amendment Act 1 of 2013 came into force. Learned Counsel for the Petitioner has rightly placed reliance on the judgment of the Supreme Court in *Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal* wherein it is held that in the exceptional circumstances to invoke the writ jurisdiction comes to play only *inter alia* when the statutory authority has not acted in accordance with the provisions of the enactment in question. In the present case we find that the District Magistrate and Collector has failed to consider the mandatory provisions of Section 14 of the SARFAESI Act, which required the Petitioner to file the Affidavit making the necessary averments in terms of the proviso

quoted above and which required the District Magistrate to satisfy himself of the contents of the Affidavit as quoted hereinabove.

6 In the circumstances, the impugned order cannot be sustained. The impugned order of the District Magistrate and Collector is set aside. The Respondent Bank is granted liberty to file a fresh Application before the District Magistrate and Collector in accordance with law.

7 The Petition is allowed in the aforesaid terms. No costs.

(V.L. ACHLIYA, J.) **(A.A. SAYED, J.)**