IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7127 OF 2015

Indiabulls Housing Finance Limited .. Petitioner

V/s.

Jagdish Lalchand Lakhani & Ors. .. Respondents

Mr.Rafiq Peer Mohideen with Ms.Trupti Surve i/b Mr.Sahil Mahajan for the petitioner

Mr.Vinod Pandey with Mr.Paresh More i/b Mr.S.U.Pandey for the respondent no.1

CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.

DATED : AUGUST 30, 2018

P.C. :

1 Heard.

2 By this petition, under Article 226 and 227 of the Constitution of India, petitioner is challenging the order dated 05.06.2015 passed by the Court of Chief Metropolitan Magistrate, Esplanade, Mumbai rejecting petitioner's application bearing case No.485/SA/2014 filed by them under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest *Act*, 2002 (for short “the said Act”) for taking possession of the mortgaged property

being Shop No.2, Ground Floor, Shangrila Vaibhav Co-operative Housing Society Limited, Plot No.616, 14th Road, Khar (West), Mumbai, 400 052.

3 The learned counsel for the petitioner submits that the learned Magistrate rejected their application under section 14 of the said Act mainly on the ground, the petitioner's claim is barred by limitation as per the Limitation Act, 1963. Hence, they are not entitled relief under section 14 of the said Act. He relies on paragraph 3 of the said order which reads thus:

> *"3. From the affidavit and verified documents filed by the applicant, it is palpably clear that on 27.01.2007, the applicant bank had sanctioned home loan facility of Rs.79,00,000/- to respondents."*

4 The learned counsel for the petitioner submits that the learned Magistrate erred in coming to the conclusion that he has power to consider whether the claim of the financial institution is within limitation or not. He submits that the Division Bench of our High Court in the matter of ***Kotak Mahindra Bank Ltd. and Ors. vs. The State of Maharashtra and Ors., reported in 2018 (4) All MR 37*** held that the Magistrate is required to ascertain whether the statements are made by the bank under the nine clauses under section 14 (1) of the said Act and once he is satisfied that the statements required in those nine clauses have been made by the bank in his affidavit, the Magistrate / District Magistrate would proceed to grant application under section 14(3). He further submits that the Division Bench of this court also held that Chief Metropolitan Magistrate was not required to go into

whether the claim of the bank was barred by limitation or not since the first clause as well as the second proviso and the nine clauses introduced by the amendment dated 15.01.2013 to section 14(1) did not invest this Jurisdiction with the authority. He relies on paragraph 19, 20 and 21 of the said judgment which reads thus:

> *"19. We are therefore of the view that the Magistrate is required to ascertain whether the statements are made by the bank under the nine clauses below Section 14(1) and once he is satisfied that the statements as required in those nine clauses have been made by the bank in its WP 1273-17 affidavit, the Magistrate/DM would proceed to grant the application under Section 14(3).*
>
> *20. Considering the law laid down by the Hon'ble Apex Court and which was relied upon by the three benches of this Court, we find that the Magistrate has travelled beyond its jurisdiction in this case in going into the limitation aspects under Sections 14(1) and 14(3). Once a recovery certificate was issued, the bank would derive its authority to recover the said amount within 12 years. The Magistrate, while exercising jurisdiction under Section 14(1), was only required to verify whether there was a mortgage keeping in view the second proviso below Section 14(1) by which the CMM/DM has to satisfy itself as regards the contents of the affidavit being in tune with the declarations required to be made by the bank in the nine clauses below the first proviso and whether the secured assets are located within his jurisdiction (See. Trade Well Vs. Indian Bank (supra)).*
>
> *21. In the light of the above, we find that the CMM was not required to go into whether the claim of the bank was barred by limitation or not since the first as well as the second proviso and the nine clauses introduced by the amendment dated 15.01.2013 to Section 14(1), did not invest this jurisdiction with the said authority. The impugned order*

dated 10.04.2017 is therefore unsustainable."

5 On the basis of this submissions, the learned counsel for the petitioner submits that this Hon'ble Court be pleased to set aside the impugned order dated 05.06.2015 passed by the learned Metropolitan Magistrate, Esplanade, Mumbai in case No.485/SA/2014 and permit the petitioner to file a fresh application under section 14 of the said Act for same relief in respect of Shop No.2, Ground Floor, Shangrila Vaibhav Co-operative Housing Society Limited, Plot No.616, 14th Road, Khar (West), Mumbai, 400 052. He submits that if the present Writ Petition is not allowed, irreparable loss and injury will be caused to them.

6 On the other hand, the learned counsel for the Respondent no.1 vehemently opposed the present Writ Petition. He submits that the learned Magistrate considering the facts and circumstances of the present case on the documents on record and rightly rejected the petitioner's application under section 14 of the said Act. He further submits that the learned Magistrate in paragraph 5 of the impugned order also held that in absence of mortgage deed or any other document creating secured charge of the assets, application u/s 14 of the said Act is not maintainable. He submits that the petitioner has filed the said application on 03.12.2014 which was beyond the period of limitation. He submits that it is well settled law that if the application is filed by the bank which is beyond the period of limitation, in that case, there is no question of entertaining any application on behalf of them whether it is under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002 or any other law. Therefore, there is no question of allowing the present Writ Petition.

7 We have heard both the sides at length.

8 It is to be noted that Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest *Act*, 2002 being a special code, the procedure as prescribed in that Act, is required to be applied to the application made under that Act. In the present proceeding, the petitioner filed an application under section 14 of the said Act on the ground that they have to recover more than Rs.79,00,000/- with interest from the respondent borrower. As the respondent borrower failed and neglected to clear their liability, respondents account was declared as non-performing assets on 22.01.2014. Thereafter, pursuant to the provisions of the said Act and also in view of the fact that the account of Respondent borrower was declared as non-performing assets, petitioner sent a notice dated 22.01.2014 to the respondent borrower under section 13(2) of the said Act calling upon him to pay a sum of Rs.81,21,095/- due and payable as on 22.01.2014 along with future interest @ 23.05% p.a. w.e.f. 23.01.2014 within 60 (sixty) days from the date of receipt of the said notice. That notice was sent by Registered Post A/D and courier to the respondent borrower and same was duly served. Inspite of the said notice respondent borrower failed and neglected to clear his dues within stipulated time. Therefore, petitioner filed Case No.48/SA/2014 under the said Act for taking physical possession of the mortgaged property i.e. Shop No.2, Ground Floor, Shangrila Vaibhav Co-operative Housing Society Limited, Plot No.616, 14th Road, Khar (West),

Mumbai, 400 052.

9 It is to be noted that whether claim of the petitioner bank is barred by limitation or not, is required to be decided by the appropriate forum and not by the Magistrate under section 14 of the said Act. Our High Court in the matter of ***Kotak Mahindra Bank Ltd. and Ors. vs. The State of Maharashtra and Ors.*** categorically held that the Chief Metropolitan Magistrate is not required to go into, whether the claim of the bank was barred by limitation or not.

10 Considering these facts, the observation and the conclusion is made by the learned Magistrate by order dated 05.06.2015 that the claim of the petitioner bank was barred by limitation, is required to be set aside.

11 The learned counsel for the petitioner made oral request before this court that the petitioner may be permitted to file a fresh application under section 14 of the said Act for same cause of action before the learned Magistrate for taking possession of vacant possession of shop no.2. We are of the opinion that same is required to be allowed directing the learned Magistrate to decide the application on its own merit considering the Division Bench judgment of this court in ***Kotak Mahindra Bank Ltd. and Ors. vs. The State of Maharashtra and Ors.*** (Supra). Hence, following order is passed:

a) Order dated 05.06.2015 passed by Chief Metropolitan Magistrate, Esplanade, Mumbai in case No.485/SA/2014 is set aside.

b) Liberty granted to the petitioner to file afresh application under section 14 of the said Act for seeking assistance of the Trial Court for taking possession of the mortgage property being Shop No.2, Ground Floor, Shangrila Vaibhav Co-operative Housing Society Limited, Plot No.616, 14th Road, Khar (West), Mumbai, 400 052.

c) If such application is filed by the petitioner under section 14 of the said Act along with all documents, the learned Magistrate is directed to decide the same on its own merits as stated hereinabove as early as possible, but in any case, within 30 days from the filing of the said application.

d) No order as to costs.

e) Writ Petition is allowed in the aforesaid terms.

(SANDEEP K. SHINDE, J.) **(K.K. TATED, J.)**