

*THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON' BLE MS. JUSTICE J. UMA DEVI

+ WRIT PETITION No.11129 of 2018

%11.04.2018

SPA Health Care Pvt. Ltd.,
Sriram Nagar, Rajahmundry, E.G. Dist.,
Presently at Hyderabad.

.. Petitioner

Vs.

\$ Union of India, Ministry of Finance,
Rep. by its Secretary, Sastry Bhavan,
New Delhi and others

.. Respondents

! Counsel for petitioner : M/s.R.Siva Sai Swaroop

^ Counsel for respondents : Mr.K.Lakshman, Asst. Solicitor
General
Mr.B.S.Prasad,
Standing counsel for R2 & R3.

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WRIT PETITION No.11129 of 2018

ORDER: *(Per Justice V.Ramasubramanian)*

The petitioner has come up with the above writ petition challenging a possession notice issued under Section 13 (4) of the Securitization Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules.

2. Heard Mr.R.Siva Sai Swaroop, learned counsel for the petitioner and Mr.B.S Prasad, learned standing counsel for the Bank.

3. It is seen from the prayer made in the writ petition that the petitioner challenges the possession notice primarily on the ground of failure of the respondent to issue a mandatory notice under Section 13(2) of the Act. But, after notice was ordered, the learned standing counsel for the Bank produced copies of the notice issued under Section 13(2) of the Act, together with the postal acknowledgment cards. On the last date of hearing, the learned counsel for the petitioner sought time to get instructions from his client.

4. Today, the learned counsel for the petitioner states that he was not aware of the receipt of the demand notice under Section 13(2) of the Act and that some employee of the company might have received it. But, the same would not tantamount to a failure on the part of the respondents to issue a demand notice under Section 13(2) of the Act.

5. In addition to the main ground of attack taken in the writ petition, it was contended by the learned counsel for the petitioner that the respondents are not entitled to take physical possession except through the process stipulated in Section 14 of the Act and that so far no order under Section 14 of the Act has been obtained. But, the law is well settled that the Authorized Officer is conferred with the power to

take possession. But, wherever there is resistance, the Authorized Officer is entitled to seek the assistance of the Chief Metropolitan Magistrate in terms of Section 14 of the Act. That does not mean that without an order under Section 14 of the Act, possession can never be taken.

6. Reliance is placed upon the judgment of the Supreme Court in *Standard Chartered Bank vs. Noble Kumar*¹, which was also followed by a Bench of this Court in its order dated 21.12.2017 in W.P. No.37954 of 2017, in support of the contention that the remedy under Section 14 of the Act should necessarily have to be taken recourse to.

7. But, the Supreme Court made it very clear in that case that it is only in cases of resistance by persons in possession that recourse to Section 14 of the Act had to be resorted to. There are law abiding persons, who hand over possession to the Authorized Officer himself. Persons, who do not obey the law but resist, will be thrown out by taking recourse under Section 14 of the Act. We do not know to which category the petitioner belongs. If the petitioner belongs to the second category the Bank will certainly take recourse under Section 14 of the Act.

8. Therefore, we find no merits in the writ petition. Hence, the writ petition is dismissed.

9. Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

April 11, 2018
KTL

¹ (2013) 9 SCC 620

