***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

***HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

And

HON'BLE MS. JUSTICE J. UMA DEVI

+W.P.No.27225 & 28854 of 2018

%Date: 23-11-2018

W.P.No.27225/2018

#Between:

1. Peechara Sunil Kumar, S/o. Surendar Rao, #59 Orion Villas, Raidurgam, Hyderabad, Telangana 500 032.
2. Smt. Peechara Kavitha, W/o. Sunil Kumar, #59 Orion Villas, Raidurgam, Hyderabad, Telangana 500 032.
3. Smt. Peechara Sujatha, W/o. Surendar Rao, H.No.7-1-796, Mankammathota, karimnagar, Telangana 505 0021.
4. Sri Joginipally Prema Sagar Rao, S/o. Hanumanth Rao, H.No.7-1-534, Mankammathota, Karimnagar, Telangana 505 001.

… Petitioners

Vs.

1. Indian Overseas Bank, 7-4-422/1, Main Road, Mukarampura, Karimnagar, 505002. rep. by its Branch Manager.
2. The Authorized Officer, Indian Overseas Bank, 7-4-422/1, Main Road, Mukarampura, Karimnagar, 505002.
3. M/s. Siri Diary India Pvt. Ltd., rep. by its Managing Director, Plot No.26, 2nd Floor, Phase No.1, Near RTA Office, Chandragiri Colony, Thirumalaghiri, Secunderabad.

… Respondents

W.P.No.28854/2018

#Between:

1. Jalagam Jagan Mohana Rao, S/o. Purushotham Rao, R/o. D.No.8-3-700, Bhagat Nagar, karimnagar, Karimnagar District.
2. Peera Sudhakar Rao, S/o. Narayana Rao, R/o. D.No.9-6-155/1, Pragathi Nagar, Karimnagar, Karimnagar District.
3. Bantha Mohanrao, S/o. Tirupathi Rao, R/o. Plot No.22, Victory Enclave, F-1, Motinagar, Hyderabad.

… Petitioners

Vs.

1. Indian Overseas Bank, rep. by its Manager, 7-4-422/1, Main Road, Mukarampura, Karimnagar, 505002.
2. The Authorized Officer, Indian Overseas Bank, 7-4-422/1, Main Road, Mukarampura, Karimnagar, 505002.
3. M/s. Siri Diary India Pvt. Ltd., rep. by its Managing Director, Plot No.26, 2nd Floor, Phase No.1, Near RTA Office, Chandragiri Colony, Thirumalaghiri, Secunderabad.

… Respondents

! For the Petitioners in W.P.No.27225/2018 : Mr. Ambatipudi Satyanarayana

! For the Petitioners in W.P.No.28854/2018 : Mr. N. Subba Rao

^ For the Respondents 1 & 2 : Mr. E. Madan Mohan Rao

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> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

W.P.Nos.27225 & 28854 of 2018

COMMON ORDER: (per VRS,J)

While the first writ petition challenges a sale notice issued under Rule 8(6) and an auction notice issued under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, both dated 12.07.2018, the second writ petition challenges not only the sale notice and auction notice but also the measures taken under Section 13(4) and 14 of the SARFAESI Act, 2002.

2. Heard Mr. Ambatipudi Satyanarayana, learned counsel for the petitioners in the first writ petition, Mr. N. Subba Rao, learned counsel appearing for the petitioners in the second writ petition and Mr. E. Madan Mohan Rao, learned counsel appearing for the Bank.

3. It appears that the 3rd respondent in both the writ petitions got a term loan of Rs.15 crores sanctioned by the Bank for setting up a dairy unit in Karimnagar District. The account of the 3rd respondent became a non-performing asset, forcing the Authorised Officer to issue a demand notice dated 01.01.2018 under Section 13(2) of the SARFAESI Act, 2002. The amount indicated in the demand notice, as outstanding debt was Rs.18,58,37,000/-. In response to the demand notice, the guarantors issued a reply dated 09.03.2018 requesting 50 days time to regularize the account and also to repay the overdue amount by 30.04.2018. Simultaneously, another letter dated 10.03.2018 was sent by the guarantors through their counsel,

raising objections. But the Authorized Officer issued a possession notice dated 12.03.2018.

4. Challenging the possession notice, the petitioners 1 and 2 in the first writ petition filed an appeal in S.A.No.91 of 2018 on the file of the Debts Recovery Tribunal, Hyderabad. According to the petitioners an interim order was granted.

5. Thereafter, the Authorised Officer filed an application under Section 14 of the SARFAESI Act, 2002 in Criminal M.P.No.64 of 2018 on the file of the Chief Judicial Magistrate, Karimnagar. According to the petitioners, no orders were passed even on the same.

6. However, the Authorised Officer issued two notices, both dated 12.07.2018, one of which was under Rule 8(6) and the other under Rule 9(1). Contending that there must have been a gap of 30 days and that the issuance of both the notices simultaneously is in violation of the law laid down by the Supreme Court in **Mathew Verghese v. M. Amritha Kumar**[1], the former Managing Director of the Company and the other Directors have come up with the first writ petition W.P.No.27225 of 2018.

7. After the first writ petition was admitted, the guarantors have come up with a separate writ petition in W.P.No.28854 of 2018 challenging the possession notice, the order passed by the Chief Judicial Magistrate under Section 14 as well as the auction cum sale notices. In this writ petition the challenge to the measures taken under Section 13(4) is on the basis that the objections to the

[1] (2014) 5 SCC 610

demand notice were not considered in the order passed under Section 13(3A) of the Act.

8. Thus it is seen that the former Managing Director and other Directors of the Company have come up with a challenge only to the notices under Rule 8(6) and 9(1) on the short ground that they have been issued together. In view of the stay granted by this Court auction did not take place. Now a period of 30 days has passed. Therefore, this issue can now be resolved by permitting the bank to issue a notice under Rule 9(1), as a period of more than four months have now passed.

9. Insofar as the contention revolving around the non-consideration of the objections under Section 13(3A) is concerned, it should be pointed out that an appeal under Section 17 is already pending before the Debts Recovery Tribunal. Therefore, the petitioners can always raise all these points before the Debts Recovery Tribunal. Though the petitioners in W.P.No.28854 of 2018 are not the appellants before the Tribunal, they are impleaded as respondents. Therefore the petitioners can always raise these objections before the Tribunal.

10. In fact, the petitioners do not deserve any indulgence from this Court. They admitted that a demand notice dated 01.01.2018 was issued. In Paragraph-4 of the affidavit, the petitioners in W.P.No.28854 of 2018 claim that they submitted their objections and that without passing orders on their objections under Section 13(3A), possession notice was issued.

11. For a Court to appreciate the above contention, the minimum requirement to be satisfied by the petitioners is (1) to plead the date of receipt of the demand notice under Section 13(2) and (2) to plead the date on which objections were raised to the demand notice. But the affidavit in support of the writ petition does not say the date on which the demand notice was received by the writ petitioners. It does not also say the date on which objections were filed to the demand notice. In the material papers filed along with the writ petition, neither a copy of the demand notice nor a copy of the objections nor even a copy of the possession notice under Section 13(4) are enclosed. In fact, the time given to the borrower under Section 13(2) to respond to the demand is only 60 days. Unless the date of receipt of the demand notice and the date of filing of objections is mentioned, it is not possible to test the correctness of the contention regarding non-consideration of objections in terms of Section 13(3A).

12. Though the petitioners in W.P.No.28854 of 2018 have not stated the date of receipt of the demand notice, the petitioners in the other writ petition have stated that the demand notice was published on 10.01.2018. Therefore, the period of 60 days would have expired by 11.03.2018. The possession notice is dated 12.03.2018. Actually, the petitioners in W.P.No.28854 of 2018 have made a very strange claim that the possession notice was dated 14.03.2018. Therefore, it is clear that the Bank issued the possession notice only after 60 days. The obligation to pass orders under Section 13(3A) would arise only if objections are filed within 60 days to the demand notice.

In the absence of any specific pleading with respect to (1) the date of receipt of demand notice; and (2) the date of filing of objections, the defence taken in terms of Section 13(3A) is very shallow and cannot be entertained.

13. Mr. N. Subba Rao, learned counsel for the petitioners in the second writ petition raised one more contention, viz., that after amendment to Section 14, there is a duty cast upon the District Magistrate or Chief Metropolitan Magistrate to satisfy himself as to the contents of the affidavit and thereafter pass suitable orders. Reliance is placed in this regard, on a decision of another Bench of this Court in **Mr.Anantha Reddy Nadeaguoni vs Union Of India**[2].

14. The contention of Mr. N. Subba Rao, learned counsel for the petitioners in the second writ petition is that the Chief Judicial Magistrate passed a very cryptic order appointing an Advocate Commissioner and that there was no application of mind or the recording of a satisfaction on his part as to the contents of the affidavit. According to the learned counsel, a mechanical order passed by the Chief Judicial Magistrate is frowned upon even by the Supreme Court in **Standard Chartered Bank v. V. Noble Kumar**[3].

15. We have carefully considered the above submissions. The order passed by the Chief Judicial Magistrate in this regard on 27.07.2018 reads as follows:

> "Heard the counsel for the petitioner, perused the petition and documents filed along with petition. In view of Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002, I am inclined to appoint an advocate commissioner for the

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[2] 2016 (6) ALD 225 (DB)
[3] (2013) 9 SCC 620

> purpose mentioned in the petition. Sri/Smt/Kum. T. Swetha, Advocate (Enrolment No.AP.2432/2017) is appointed as commissioner to take possession of the schedule property from the hands of the respondents and handed over the possession thereof to the petitioner and inventory the articles if any in the schedule property and if necessary to take police aid from the police station, Karimnagar-II town with prior notice.
>
> His/Her fee is fixed Rs.10,000/- (Rupees Ten thousand only) to be paid by the petitioner directly, warrant returnable by 27.08.2018."

16. In *Standard Chartered Bank*, the Supreme Court held that under the second proviso to Section 14(1) the Magistrate is required to examine the factual correctness of the assertions made in an affidavit and arrive at a satisfaction. The Court also held that it is only after recording his satisfaction that the Magistrate can pass appropriate orders.

17. But it must be pointed out that the case that was decided by the Supreme Court in *Standard Chartered Bank*, arose prior to the insertion of two provisos under sub-section (1) of Section 14 under Act 1/2013. This was made clear by the Supreme Court towards the end of para-22 of the decision in *Standard Chartered Bank*. In other words, the Supreme Court had no occasion to test the principles of law formulated in paragraphs-24 and 25 of its decision in *Standard Chartered Bank*, with reference to the facts of a particular case. We must keep this in mind before taking the principle formulated in para-25 of its decision in *Standard Chartered Bank*, as a ratio of universal application.

18. Even in *Anantha Reddy*, decided by another Bench of this Court, the factual details are not clearly borne out from the report. What was challenged in *Anantha Reddy* was the proceedings of the Collector-cum-District Magistrate, dated 15.06.2015. There is no

indication in the decision of this Court in *Anantha Reddy* as to whether any affidavit was actually filed in that case before the District Magistrate and as to what type of order was passed by the District Magistrate. Paragraph-6 of the decision in *Anantha Reddy* alone contained a reference to facts and that too very briefly. Para-6 of the decision in *Anantha Reddy* is reproduced as follows:

> "The impugned proceedings dated 16.06.2015 fall woefully short insofar as this requirement is concerned. There is not even a mention of any affidavit having been filed by the authorized officer of the secured creditor, the fourth respondent herein, much less any satisfaction of the District Magistrate, Mahabubnagar, with regard to the contents thereof."

19. But in the case on hand, the petitioners in the second writ petition have filed a copy of the affidavit filed by the Authorised Officer before the Chief Judicial Magistrate. The affidavit contains all the details that are required under Clauses (i) to (ix) of the proviso to Section 14(1). It contains the details regarding the sanction of loans, the creation of mortgage, the schedules of properties, the account becoming a non-performing asset, the issuance of the demand notice, the failure of the borrowers to make payment, the issuance of the possession notice and every other detail that is required of the Authorised Officer to make. Therefore, it is clear that the requirements of the first proviso to Section 14 (1) were satisfied by the Authorised Officer of the Bank.

20. Coming to the order passed by the Chief Judicial Magistrate, it is seen that the Magistrate did not use the word "affidavit" in his order. But he has given an indication that the petition and the documents were perused. Even in *Anantha Reddy*, it was

made clear by the Division Bench that the requirement of recording satisfaction, does not extend to the furnishing of detailed reasons.

21. Let us keep all these things aside for a moment. What is relied upon by the petitioners is the law laid down by the Supreme Court in *Standard Chartered Bank v. V. Noble Kumar*. In paragraph-27 of the decision, the Supreme Court made it clear that by whatever manner the secured creditor obtains possession, either through the process contemplated under Section 14 or otherwise, the obtaining of possession of a secured asset, is always a measure against which a remedy under Section 17 is available. Therefore, the petitioners ought to have gone only before the Tribunal especially since one appeal at the instance of some of the guarantors is already pending before the tribunal as against the possession notice under Section 13(4). Therefore, the challenge to the order passed under Section 14 is liable to be rejected on the ground that the petitioners have an alternative remedy before the Tribunal.

22. In fine, the only contention that is capable of being accepted is the lack of a gap of 30 days between the notice under Rule 8(6) and Rule 9(1). Therefore, giving liberty to the Bank to issue a fresh notice under Rule 9(1), the writ petitions are disposed of. There will be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

23rd November, 2018
Js.

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