IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 4705 OF 2018

M/S SHIRDI COUNTRY INNS PRIVATE LIMITED THROUGH ITS AUTHORISED REPRESENTATIVE YOGESH MAHADEV BURDE AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND OTHERS
...
Advocate for Petitioners :
Mr. R. F. Totala h/f. Mr. Totala R. R.
AGP for Respondents No. 1 & 2 :
Mr. K. B. Jadhavar
Advocate for Respondents No. 3 & 4 :
Mr. S. V. Natu
...
WITH
CIVIL APPLICATION NO. 2310 OF 2019
...

CORAM: S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.
DATE: 20th FEBRUARY, 2019

PER COURT :

1. We have heard the learned counsel for the petitioners and the respondents.

2. The petitioners assail the order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (hereinafter referred to 'SARFAESI Act').

3. Under order dated 22.01.2019, we had directed the petitioners to deposit Rs. 5,00,00,000/- (Rs. Five Crores only) within a period of two weeks. The said amount is not yet deposited.

4. Mr. Totala, the learned counsel submits that the petitioners would deposit Rs. 4,00,00,000/- (Rs. Four Crores only) by 22.02.2019, and for depositing remaining amount of Rs. 1,00,00,000/- (Rs. One Crore only) one month time is required. We are not ready to accede to the request of the petitioners. By way of indulgence, the petitioners are permitted to deposit Rs. 5,00,00,000/- (Rs. Five Crores only) by 22.02.2019.

5. Upon hearing the learned counsel for the respective parties it is manifest that the present respondent / secured creditor has moved an application under Section 14 of the SARFAESI Act before the District Magistrate for physical

possession.

6. It appears that the said secured creditor has issued notice under Section 13 (2) of the SARFAESI Act and has taken the symbolic possession. The petitioners have assailed the said action before the Debt Recovery Tribunal, Aurangabad by filing application under Section 17 of the said Act. It is submitted that the petitioners have filed appeal against the order of the Tribunal and the same is pending.

7. Amongst the various grounds the order under Section 14 of the SARFAESI Act is also challenged on the ground that the respondent / Bank has made incorrect statement in its application that no objection to the notice under Section 13 (2) of the SARFAESI Act was received and that the petitioners have not deposited any amount after the issuance of notice under Section 13 (2) of the SARFAESI Act. Upon perusal, it transpires that the petitioners did raise the objection to the

notice under Section 13 (2) of the SARFAESI Act as provided under Section 13 (3A) of the SARFAESI Act, so also, it appears that some amount is deposited by the petitioners with the respondent / Bank after the issuance of notice under Section 13 (2) of the SARFAESI Act. However, the application filed by the respondent / Bank specifically states that no objection is received from the petitioners to the notice under Section 13 (2) of the SARFAESI Act and that the amount has not been deposited.

8. In fact, the respondent / Bank was required to truly and faithfully state all these facts in the application before the District Magistrate. The application of the secured creditor is required to state following details -

> *"Section 14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. - (1).....*
> *(a) take possession of such asset and documents relating thereto; and*
> *(b) forward such asset and documents to the secured creditor:*
> *Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised*

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:

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.

Provided further that if no order is passed by the Chief metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such also period but not exceeding in aggregate sixty days.

Provided also that the requirement of fling affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act."

9. It is clear that clauses vii and viii of Section 14 (1) (b) Proviso were not correctly stated by the Bank. The reliance was placed on the order passed by the Debt Recovery Tribunal. The order passed by the District Magistrate also nowhere refers to the order of the Debt Recovery Tribunal.

10. In the light of above, it would not be

possible to sustain the order. However, the respondent also requires to be given liberty to make amendment and to file the detail application as is required under Section 14 of the SARFAESI Act.

11. In the result, the impugned order is quashed and set aside. The respondent is relegated before the District Magistrate. The respondent may file fresh application or may amend the application giving the details as required under Section 14 of the SARFAESI Act. The District Magistrate shall thereafter decide the application in accordance with provisions of law and the procedure as laid down under Section 14 of the SARFAESI Act.

12. This order would enure to the benefit of the petitioners only if the petitioners deposit the amount of Rs. 5,00,00,000/- (Rs. Five Crores only) as directed under order dated 05.02.2019 by 22.02.2019.

13. Writ Petition is disposed of. No costs.

14. In view of disposal of writ petition, civil application also stands disposed of.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

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