IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10885 of 2018

State Bank of India .. Petitioner

Versus

R.S. Luth Education Trust and ors .. Respondents

…

Mr. Vivek S. Sawant for the petitioner.
Mr. Mukul Taly with Raj Rampal and Mr.Vithoba Masurkar and Aziz Shaikh for Respondent Nos.1 to 3.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 4th NOVEMBER, 2019

P.C:-

1 Heard learned counsel for the parties.

2 Challenge in the Writ Petition is to an order dated 17th January 2018 passed by the Collector, Nasik dismissing application filed by the petitioner under Section 14 of the SARFAESI Act, 2002.

3 A preliminary objection has been raised by the Respondent to the maintainability of the Writ Petition by pleading that the petitioner has an efficacious alternative remedy of filing an Appeal against the impugned order as envisaged by Section 17(1) of the SARFAESI Act, 2002. To make good submission, learned counsel relies upon the decision of the Supreme Court reported in 2010(8) SCC 100, *United Bank of India Vs. Satyawati Tondon & Ors*.

4 Learned counsel relies upon paragraphs 34 and 42 to 45 of the said decision. The decision relied upon refers to the scheme of the SARFAESI Act, 2002 by highlighting that Chapter III of the Act contains the statutory provisions for enforcement of security interest. Sub-section (1) of Section 13 empowers a Court or a Tribunal to enforce the provisions of the Act if a security interest is created in favour of any secured creditor. Secured creditor would be as defined in clause (ze) of Section 2. Sub-section (2) of Section 13 enjoins upon the secured creditor to issue a notice to the borrower calling upon the borrower to discharge the liability concerning the secured interest within 60 days. As per sub-section (3A) of Section 13, the borrower has a right to make a representation against the notice issued under sub-section (2), and if made, the secured creditor has to deal with the response to the notice and pass an order. As per sub-section (4) of Section 13, if the borrower fails to discharge the liability as

envisaged by sub-section (2), the secured creditor is empowered to take recourse to one or more of the measures contemplated by paragraphs (a) to (d) of sub-section (4). Vide para (a), the secured creditor is empowered to take possession of the secured asset of the borrower.

4 Section 17 of the Act enables any person including a borrower aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by a secured creditor to challenge the same before the Debt Recovery Tribunal. As per Section 14, if possession of a secured asset is required to be taken by a secured creditor, it may take the help of the District Magistrate or the Chief Metropolitan Magistrate.

5 It is in the context of the aforesaid provisions that the observations of the Supreme Court in paragraph Nos.34 and 42 to 44 of the decision in Satyawati Tondon's case have to be understood. Meaning thereby, if the secured creditor intends to take possession of the secured assets and needs the help of the Chief Metropolitan Magistrate or the District Magistrate and obtains a favourable order, it is the borrower who would have a right to approach the Debt Recovery Tribunal for the reason no challenge independently lies to a measure taken under Section 14 unless it is intermingled with a challenge to the claim made by the secured creditor.

6 Thus, we overrule the preliminary objection to the maintainability of the Writ Petition.

7 On merits, the impugned order declines the assistance to the Bank to take possession of the secured assets on the reasoning that a School is being run from the premises and the children have a right to education under The Right of Children to Free and Compulsory Education Act, 2009.

8 This reasoning is perverse for the reason if an institution takes a loan from a secured creditor and secures an immovable property wherefrom a school is run, the security would never be capable of being enforced.

9 Learned counsel for the Respondent refers to sub-rule(3) of Rule 8 of the Security Interest Enforcement Rules 2002 which enjoins upon the person authorized or appointed to take possession of a secured asset to take such care of the property as an owner would do with ordinary students. As per the learned counsel, this means that the Bank would be obliged to continue to run the School. The argument is noted and rejected for the reason the care and proper custody envisaged by the rule in question relates to the physical attributes of the property and not the user thereof.

10 It is then urged that the Collector has given an independent reason to reject the request, being mismatch between the request made and the description of the mortgage property as per the deed of mortgage.

11 The deed of mortgage refers to the Schedule under the captions, Firstly, Secondly, Thirdly, Fourthly and Fifthly. The description under the heads pertains to different parcels of land. There is a reference to structures and permanent fixtures on the land.

12 There is a dispute regarding the buildings and the permanent fixtures and since we are inclined to remand the matter to the Collector on the said aspect of the matter, we note no further and thus deal no further.

13 Thus, we dispose of the petition setting aside the impugned order dated 17th January 2018.

14 We restore the application filed by the petitioner before the learned Collector, Nasik with a direction to dispose of the same guided by the law declared by us in the present decision. At the remand, the Collector shall decide the application within three months.

15 Before closing, we also note that the Respondent appears to have made an offer for one time settlement which has been accepted. Request for extension of time is pending. The bank officers may consider the request as per law.

SMT. BHARATI DANGRE, J **CHIEF JUSTICE**

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