

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2019

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALTA

WP.No.28090 of 2019

M/s/Shriram Housing Finance Ltd
rep.by its Authorized Officer,
Mrs.Asha Lukose ...Petitioner

Vs

The District Collector,
The District Magistrate,
Cuddalore Collectorate,
Cuddalore District. Respondent

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondent to pass orders on the petition filed on 25.01.2019 under Section 14(1) of SARFAESI Act.

For Petitioner : Mr.Ajmal Azzatti

For Respondents: Mr.Akhil Akbar Ali
Government Advocate

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner Financial Institution had granted loan in favour of Mr.Mohammed Ansari M Y and Mrs.Fathima Janna to purchase house / flat on arriving at a satisfaction as to their eligibility criteria and sanctioned the amount of Rs.15,55,555/-. In view of defaults committed, a notice dated 27.02.2018 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI ACT) was issued demanding a sum of Rs.16,79,681/- followed by a Possession Notice dated 18.08.2018 under Section 13(4) of SARFAESI Act dated 18.08.2018 was issued.

2. The learned counsel appearing for the petitioner would submit that despite opportunities given, they did not repay the loan and therefore they approached the respondents to file an application under Section 14(1) of the SARFAESI Act to take possession of the secured assets and since it was not considered and given disposal, came forward to file this Writ Petition.

3. Mr.Akhil Akbar Ali, learned Government Advocate accepts notice on behalf of the respondents and invited the attention of this Court to the counter affidavit of the respondent dated 31.12.2019 and would submit that enquiry was fixed on 28.02.2019 for the purpose of ascertaining the facts and the loan amount and on 28.02.2019, borrowers appeared and gave statement that 28 instalments out of 31 instalments have already been paid only 3 instalments remain to be paid and taking note of the said submission, it was found that there was some contradiction as to the actual payment of loan by the borrowers and hence the application filed by the petitioner / Bank under Section 14 of the Act came to be rejected, vide order dated 09.09.2019. He would further add that in the light of the said development, nothing remains for further adjudication in this Writ Petition.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it.

5. The Hon'ble Supreme Court of India in the decision reported in Authorised Officer, Indian Bank Vs. D.Visalakshi (2019 SCC Online SC 1242 (Civil Appeal no.6295-15) has considered the competency of the District Magistrate to pass orders under Section 14 (1) of SARFAESI Act and it is relevant to extract paragraph nos.54 & 56 of the order:

"54.Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of Cr.P.C., would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.

56.To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We

accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks)"

6. In *Standard Chartered Bank Vs. Noble Kumar and others* (2013 (10) Scale 540), it is relevant to extract paragraph nos.25, 26 & 27 of the same:

"25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.

26. It is in the abovementioned background of the legal frame of Sections 13 and 14, we are required to examine the correctness of the conclusions recorded by the High Court. Having regard to the scheme of Sections 13 and 14 and the object of the enactment, we do not see any warrant to record the conclusion that it is only after making an unsuccessful attempt to take possession of the secured asset, a secured creditor can approach the Magistrate. No doubt that a secured creditor may initially resort to the procedure under Section 13(4) and on facing resistance, he may still approach the Magistrate under Section 14. But, it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14. The submission that such a construction would deprive the borrower of a remedy under Section 17 is rooted in a misconception of the scope of Section 17.

27. The "appeal" under Section 17 ["17. Right to appeal.-(1) Any person (including the borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:Provided

that different fees may be prescribed for making the application by the borrower and the person other than the borrower." (emphasis supplied)] is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower (sic the secured creditor). Therefore, the borrower is always entitled to prefer an "appeal" [Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311. The expression "appeal" as originally existed in Section 17 is substituted by the word "representation" in view of the judgment of this Court in Mardia Chemicals case." 59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case." (Mardia Chemicals case, SCC p. 352, para 59)] under Section 17 after the possession of the secured asset is handed over to the secured creditor. Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14. We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available''.

7. In the light of the ratio laid down in the above cited decisions, under Section 14(1) of SARFAESI Act, the District Magistrate has to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. A perusal of the impugned order would disclose that the respondent had taken into consideration the merits of the matter especially with regard to the quantum of the amount paid and in exercise of powers under Section 14(1), the said official has no exercise to do so.

8. In the result, the Writ Petition is allowed and the impugned order is set aside and the petitioner is at liberty to apply afresh under Section 14(1) of SARFAESI Act to the concerned authority for the purpose of work out their remedy. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The District Collector,
The District Magistrate,
Cuddalore Collectorate,
Cuddalore District.

+lcc to Government Pleader SR.NO. 101656

WP.No.28090 of 2019

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