

**HIGH COURT FOR THE STATE OF TELANGANA**  
**\* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN**  
**AND**  
**HONOURABLE SRI JUSTICE P. KESHA VA RAO**

**+WRIT PETITION No.5018 OF 2019**

% Date: 18-03-2019

Between:

# M/s. Tulsi Rocks Pvt.Ltd.,  
rep.by its Director P. Rajesh Bhandari,  
Secunderabad & 2 others .. Petitioners

v.

\$ Bank of India, Hyderabad Main Branch,  
Hyderabad & another. .. Respondents

! Counsel for the Petitioners : Mr. Vedula Srinivas

^ Counsel for Respondents : - -

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. 2010 (260) ELT 3 (SC)

**C/15**

**HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**HONOURABLE SRI JUSTICE P. KESHA VA RAO**

**WRIT PETITION No.5018 OF 2019**

**ORDER:** *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Challenging the order passed by the Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act'), the borrower and guarantors have come up with the above Writ Petition.

2. Heard Mr. Vedula Srinivas, learned counsel for the petitioners.

3. Admittedly, the 1<sup>st</sup> petitioner company was granted credit facilities by the 1<sup>st</sup> respondent bank to the tune of nearly Rs.20.00 Crores. The credit facilities were secured by the factory building as well as other immovable properties. The petitioner Nos.2 and 3 herein stood as guarantors for the due repayment of the loan.

4. Due to the defaults committed by the petitioners, the account was classified as a Non-Performing Asset on 30.06.2017.

5. Thereafter, a demand notice dated 01.07.2017 was issued under Section 13 (2) of the Act. Since the petitioners failed to respond to the demand notice, a possession notice dated 14.11.2018 was issued under Section 13 (4) of the Act.

6. It appears that the petitioners responded to the possession notice by offering a One-Time Settlement (OTS) through their letter, dated 07.02.2019. But, the bank rejected the offer by their reply dated

20.02.2019, on the ground that the amount indicated therein was not sufficient.

7. In the meantime, the Authorized Officer of the bank filed an application in Criminal M.P. No.8549 of 2018 on the file of the Chief Metropolitan Magistrate, Nampally, Hyderabad, under Section 14 of the Act for the appointment of an Advocate-Commissioner to take physical possession of the property. The Court passed an order, dated 05.01.2019, appointing the 2<sup>nd</sup> respondent in this writ petition as the Advocate Commissioner, to take over possession. Challenging the said order, the petitioners have come up with the above writ petition.

8. The main contention of Mr. Vedula Srinivas, learned counsel for the petitioners is that after the amendment to Section 14 of the Act under the Amendment Act, 2016, any application by the secured creditor should be accompanied by an affidavit duly affirmed by the authorized 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:*

9. The second proviso to sub-section (1) of Section 14 of the Act obliges the Chief Metropolitan Magistrate to satisfy himself as to the contents of the affidavit before passing suitable orders for the purpose of taking possession of the secured assets within a period of thirty (30) days from the date of application. But, according to the learned counsel for the petitioner, this statutory requirement was thrown to the winds by the 1<sup>st</sup> respondent and the affidavit filed by the authorized officer in support of his application before the Chief Metropolitan Magistrate did not meet the requirements specifically included in the first proviso to sub-section (1) of section 14 of the Act. Hence, it is contended by Mr.

Vedula Srinivas, learned counsel for the petitioners that when the affidavit filed by the authorized officer did not contain the parameters indicated in the statute, the application under Section 14 of the Act itself was defective and the order passed by the Chief Metropolitan Magistrate on such a defective application is without application of mind.

10. In short, the contention of Mr. Vedula Srinivas, learned counsel for the petitioners is that the affidavit filed by the authorized officer in support of the application under Section 14 of the Act did not satisfy the requirements listed out in the first proviso to section 14 (1) of the Act and consequently the satisfaction arrived at by the Chief Metropolitan Magistrate in terms of the second proviso to Section 14 (1) of the Act is vitiated by non-application of mind.

11. We have carefully considered the above submissions.

12. After the advent of 2016 Amendment with effect from 01.09.2016, sub-section (1) of Section 14 of the Act has four (04) provisos. We are concerned in this case only with the first and second provisos and they are re-produced as follows:

“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 <sup>2</sup>[within a period of thirty days from the date of application”:

13. Admittedly, the application filed by the 1<sup>st</sup> respondent bank before the Chief Metropolitan Magistrate in the form of a verified petition was also accompanied by an affidavit sworn to by the authorized officer. The application in the form of verified petition and the affidavit of the authorized officer were also accompanied by a list of documents which included (i) the loan sanction letter, (ii) three numbers of demand promissory notes, (iii) letter of instalment, (iv) indemnity, (v) letters of guarantee, (vi) hypothecation agreement, (vii) letters of acknowledgment of debts, (viii) sale deeds relating to the properties over which security interest was created, (ix) the demand notice under Section 13 (2) along with postal acknowledgment cards, (x) the possession notice under Section 13 (4) along with copies of newspaper publication, and (xi) statement of account.

14. The affidavit of the authorized officer filed in support of the application under Section 14 of the Act contained the following:

- (i) that the 1<sup>st</sup> petitioner was sanctioned with a cash credit facility, a term loan facility and EPC to the total tune of Rs.20.00 Crores;
- (ii) that the Directors of the Company gave personal guarantee;
- (iii) that five persons including the writ petitioner Nos.2 and 3 herein became the guarantors;
- (iv) that the out-standings in the loan account are secured by the equitable mortgage on the properties described in the schedule;

- (v) that all necessary documents, such as demand promissory notes, letters of instalment, hypothecation-cum-loan agreement, letter of guarantee etc., were executed by the respondents in the application under Section 14 of the Act;
- (vi) that the 2<sup>nd</sup> petitioner in this writ petition created an equitable mortgage of one property on 22.11.2014 and the 3<sup>rd</sup> petitioner in the writ petition created an equitable mortgage of another property on the same day;
- (vii) that the borrower failed and neglected to repay the amounts leading to the account becoming a Non-Performing Asset;
- (viii) that a demand notice dated 01.07.2017 was issued calling upon the petitioners to pay a sum of Rs.20,62,06.630.94ps. within sixty (60) days;
- (ix) that the demand notice was served on the petitioners on 17.07.2017;
- (x) that since the petitioners failed to pay the amounts as demanded, the possession notice under Section 13 (4) of the Act was issued on 14.11.2018;
- (xi) that the possession notices were published in two newspapers;
- (xii) that the secured creditor has also initiated similar proceedings in respect of two other properties situate in Medak District;
- (xiii) that as the secured creditor the bank was entitled to take physical possession of the secured assets; and

(xiv) that the 1<sup>st</sup> petitioner company resisted the attempt of the bank to take possession and that therefore the advocate commissioner should be appointed

15. A careful look at the averments contained in the affidavit of the authorized officer filed in support of the application under section 14, the gist of which we have extracted above would show that all the ingredients specified in Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act find a place in the affidavit. In fact, instead of repeating the contents of Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act parrot-like, the authorized officer has chosen to mention all the ingredients in his own language in simple terms. Therefore, the contention that the ingredients of Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act are not found in the affidavit of the authorized officer is not factually correct.

16. While reiterating our finding that all the ingredients of Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act find a place in the affidavit of the authorized officer filed in support of the application under Section 14 of the Act, we would also add that in cases of this nature, a substantial compliance would be sufficient. As pointed out by the Supreme Court in **Commissioner of Central Excise v. Mrs. Harichand Shri Gopal**<sup>1</sup>, the Courts have always invoked the doctrine of ‘substantial compliance’, to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the

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<sup>1</sup>. 2010 (260) ELT 3 (SC)

essence or the substance of the requirements. The Supreme Court pointed out in the said case that the Court should determine whether the Statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance.

17. Therefore, wherever this Court finds that the parameters indicated in Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act are broadly complied with, the Court is bound to invoke the doctrine of 'substantial compliance'. It must be remembered that Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act merely provide the form in which the essential averments for an application under Section 14 of the Act are to be made. Therefore, what is important, is the substance and not the form.

18. Let us take a converse case where Clauses (i) to (ix) of the first proviso to Section 14 (1) of the Act are simply cut and pasted in an affidavit filed by the authorized officer before the Chief Metropolitan Magistrate, without indicating the amounts due and the steps taken under Section 13 (2) and 13 (4) of the Act. Such an affidavit will be frowned upon as something that is a mere skeleton without flesh and bone. Courts have repeatedly held that parrot-like repetition of the language employed in a Statute as if it is a *mantra* will not help a party. The doctrine of substantial compliance is a twin-sister of the said principle of law.

19. One-more aspect that we cannot overlook is that the petitioners do not claim to have responded to the demand notice under

Section 13 (2) of the Act. The possession notice under Section 13 (4) of the Act was issued after more than 16 months of the demand notice.

20. Though the Act provides for a remedy of appeal under Section 17 of the Act, as against the measures taken under Section 13 (4) of the Act, the petitioners have not availed such a remedy.

21. Persons, who do not choose to challenge the possession notice under Section 13 (4) of the Act, cannot merely challenge the order under Section 14 of the Act. While Section 13 (4) of the Act is the substantial provision conferring the power on the authorized officer to take possession, Section 14 of the Act is merely executory in nature for aiding and assisting the authorized officer in taking over possession. A mere challenge to an order under Section 14 of the Act without challenging a possession notice before the appropriate forum under Section 13 (4) of the Act is like a challenging an execution petition without challenging a decree.

22. Therefore, we find no legal or factual grounds to interfere with the order of the Chief Metropolitan Magistrate passed under Section 14 of the Act. Hence, the Writ Petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

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**V. RAMASUBRAMANIAN, J**

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**P. KESHAVA RAO, J**

**March 18, 2019**  
Mgr