THE HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

<u>WRIT PETITION No.5876 OF 2019</u>

Date: 20.03.2019

Between:
M/s. Tulsi Rocks Pvt. Ltd.,
Karkhana, Secunderabad,
Rep. by its Director and another.

… Petitioners

v.

Bank of India, Hyderabad Main Branch,
Abids, Hyderabad, rep. by its Authorised Officer
and another.

... Respondents

For Petitioners	:	Sri Vedula Srinivas
For Respondents	:	Smt. V. Dyumani
Gist	:	
Head Note	:	
Cases Referred	:	2011 (1) Supreme Court Cases 236 2018 SCC Online Bombay 2579

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.5876 OF 2019

ORDER: ***(Per V. Ramasubramanian, J)***

The petitioners, who are borrowers, have come up with the above writ petition challenging the order passed by the Chief Judicial Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act').

2. Heard Mr. Vedula Srinivas, learned counsel for the petitioners. Smt. V. Dyumani, learned Standing Counsel takes notice for the 1st respondent Bank.

3. The very similar orders passed as against the very same petitioners by the Chief Metropolitan Magistrate under Section 14 of the Securitization Act, became the subject matter of challenge before this very Bench in WP No.5018 of 2019 on the very same grounds, namely, that the requirements of clauses (i) to (ix) of the proviso to Section 14 (1) have not been complied with in the affidavit filed in support of the application under Section 14 of the Securitisation Act and that as a consequence, the satisfaction arrived at by the Chief Judicial Magistrate under the second proviso was defective. But, we rejected the said contentions by our judgment dated 18.03.2019 in respect of the very same petitioners against the very same bank, though against an order passed by a different learned Magistrate.

4. Mr. Vedula Srinivas, learned counsel for the petitioners contended that the doctrine of substantial compliance invoked by this Bench in WP No.5018 of 2019 by order dated 18.03.2019 in the case of the very petitioners, is subject to certain exceptions. The learned counsel drew our attention to paragraphs 32 to 33 of the judgment of the Constitution Bench of the Supreme Court in **Commissioner of Central Excise v. Hari Chand Shri Gopal[1].**

5. But, as seen from the relevant paragraphs of the decision of the Constitution Bench, the Court drew a distinction between the requirements which are mandatory and requirements which are directory. Where certain requirements are merely procedural, the Court held that the non-compliance with the same may not tantamount to failure to comply with statutory requirements.

6. On facts, we see from the affidavit filed by the Authorized Officer in support of the application of the Bank under Section 14 of the Act that all the ingredients of Clauses (i) to (ix) of the first proviso to section 14 (1) of the Securitisation Act are found therein.

7. The requirements of clauses (i) to (ix) of the first proviso to section 14 (1) of the Securitisation Act, after the amendment Act 2013, are as follows:

> *"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;*

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[1] **2011 (1) Supreme Court Cases 236**

(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:"

8. In the affidavit in support of the application, under Section 14 of the Securitisation Act, the Authorized Officer has stated the following:

(i) that the 1st 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 2nd petitioner in this writ petition created an equitable mortgage of one property on 22.11.2014 and the 3rd 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.20,62,06.630.94 ps. 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 1st petitioner company resisted the attempt of the bank to take possession and that therefore the advocate commissioner should be appointed.

9. Therefore, even on facts, the requirements of Clauses (i) to (ix) stand satisfied.

10. Drawing our attention to a judgment of the Bombay High Court in **Masscorp. limited v. Cosmos Co.Op. Bank Limited**[2], it is contended by Mr. Vedula Srinivas, learned counsel for the petitioners, that the requirements of clauses (i) to (ix) are statutory requirements and that the Magistrate is required to pass an order, after arriving at the subjective satisfaction in terms of the second proviso.

11. But it is seen from paragraph 4 of the judgment of Bombay High Court that in the case before Bombay High Court, the petitioner had not filed the affidavit in terms of the requirements of Section 14 of the Securitisation Act. In this case, we have found that not only an affidavit was filed, but also the averments extracted in the previous paragraphs from the affidavit disclose that the requirements are complied with. Therefore, we see no reason to take a different view than the one taken in WP No.5018 of 2019.

12. Hence, the Writ Petition is dismissed. The miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 20, 2019

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[2] **(2018 SCC Online Bombay 2579)**