THE HIGH COURT FOR THE STATE OF TELANGANA

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

WRIT PETITION No.6095 OF 2018

Date: 23.04.2019

Between:

M/s. Choice Precitech India Private Limited,
Padmanagar Colony, HMT Township, Hyderabad
represented by its Managing Director B.Narayana Murthy
and others.

… Petitioners

v.

State Bank of India, Bandra East, Mumbai
represented by its Chairman and Managing Director
and others.

... Respondents

For Petitioners	:	M/s. P.S. Rajasekhar
For Respondents	:	Mr. B.S. Prasad and Mr. Maruthi Jadav
Gist	:	
Head Note	:	
Cases Referred	:	

2013 (9) SCC 620

C/15

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.6095 OF 2018

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

Challenging the orders passed by the Chief Metropolitan Magistrate under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Act (for short 'the Act') and also challenging the sale notice dated 11.02.2018 issued under the Security Interest (Enforcement) Rules, the borrowers have come up with the above writ petition. During the pendency of the writ petition, a fresh sale notice was issued on 24.03.2019 and hence, the petitioner got the prayer amended through I.A No.2 of 2019 so as to include a challenge to the fresh sale notice also.

2. Heard Mr. P.S. Rajasekhar, learned counsel for the petitioner and Mr. Maruthi Jadav, learned counsel appearing for the Bank.

3. At the outset, it should be pointed out that the orders passed by the Chief Metropolitan Magistrate under Section 14 of the Act are dated 21.11.2015 and 31.03.2016. The writ petition was filed in February 2018. The reasons for coming to the Court after a delay of three years, is sought to be explained by Mr. P.S. Rajasekhar, learned counsel for the petitioner with reference to a single sentence in paragraph-15 of the affidavit in support of the writ petition. IT is stated therein that the petitioners had to approach this Court to get the

copies of the criminal petitions. But, nowhere in the writ petition is it pleaded that the petitioners were not aware of the orders of Chief Metropolitan Magistrate. Therefore, the writ petitions are liable to the thrown out on the ground of delay and latches, at least insofar as the challenge to the orders under Section 14 of the Act are concerned.

4. In any event, let us also examine the grounds of challenge. The orders of the Chief Metropolitan Magistrate are challenged on three grounds, *viz.,* (1) that the affidavit in support of the petitions did not contain the requirements indicated in clauses (i) to (ix) of the proviso to Section 14 (1)(b) of the Act, (2) that the Chief Metropolitan Magistrate did not pass orders within thirty days from the date of the application as required by the second proviso to Section 14 (1) (b) of the act and (3) that the order of the Chief Metropolitan Magistrate does not reflect the subjective satisfaction required of him under the second proviso to Section 14 (1) (b) of the Act.

5. Strong reliance is placed by Mr. P.S. Rajasekhar, learned counsel for the petitioner on the decision of the Supreme Court in **Standard Chartered Bank v. V. Noble Kumar**[1]**.**

6. Before we go into the above contentions, we should bring on record certain facts, which are as follows:

(i) The 1st petitioner admittedly, availed credit facilities from the Bank and those facilities were secured by the equitable mortgage of nine immovable properties owned by the 1st petitioner Company and one immovable property owned by the

[1] **2013 (9) SCC 620**

petitioners 2 and 3. In all, ten immovable properties were mortgaged in favour of the Bank.

(ii) The bank appears to have gone before the Chief Metropolitan Magistrate independently in respect of these properties (or in a combination of one or two properties). Every proceeding initiated against every one of those properties became the subject matter of different proceedings.

(iii) The present writ petition was originally filed in respect of only four out of ten items of secured assets. These four items of properties are found at serial Nos.5, 6 8 and 9 in paragraph-3 of the affidavit in support of the writ petition.

(iv) However, after the filing of the writ petition, the petitioners have gone before the Debts Recovery Tribunal and filed SA No.113 of 2018 insofar as item Nos.8 and 9 of immovable properties are concerned.

(v) We do not know the reason as to why the petitioner has chosen to go before the Debts Recovery Tribunal in respect of two out of four items in relation to which the present writ petition is filed. As a result, the learned counsel for the petitioners confined his arguments to item Nos.5 and 6 of immovable properties. In other words, the validity of the orders of the Chief Metropolitan Magistrate questioned in this writ petition is now confined only to two items of properties.

(vi) As a matter of fact, the order passed by the Chief Metropolitan Magistrate in Criminal M.P. No.946 of 2015 relates only to two properties which are described at serial Nos.5 and 6 of the paragraph-3 of the affidavit in support of the writ petition. The order passed in Criminal M.P. No.436 of 2016 covers items No.8. If the petitioner has already gone before the DRT in SA No.113 of 2018 insofar as item Nos.8 and 9 are concerned, the challenge to the order of the Chief Metropolitan Magistrate passed in Criminal MP No.436 of 2016 goes.

(vii) Therefore, it is clear that the petitioners are attempting to ride two horses at the same time, not even in the same direction but in different directions.

7. In fact, the learned counsel for the Bank brought to our notice that any number of writ petitions were filed by the petitioners challenging every attempt made by the Bank. In an attempt to steer clear the doubts in this regard, the learned counsel for the petitioners filed a tabular statement giving details of the writ petitions filed.

8. It appears from that,

(1) the petitioners 2 and 3 filed WP No.2091 of 2016 challenging an order passed under Section 14 of the Act in Criminal MP No.890 of 2015 dated 12.11.2015, in respect of item No.10 of the property but, it was closed leaving it open to the petitioners to go before DRT,

(2) the petitioners 2 and 3 filed WP No.23066 of 2017 against the very same order of the Chief Metropolitan Magistrate dated 12.11.2015 in Criminal MP No.890 of 2015 in

relation to item No.10 of the property, but withdrew the writ petition on 06.02.20185,

(3) the petitioners 1 to 3 filed WP No.42852 of 2017 against the sale notice dated 04.06.2017 in respect of item No.10, but the same was withdrawn on 07.02.2018.,

(4) the 1st petitioner filed SA No.489 of 2016 on the file of the DRT challenging an auction sale notice dated 23.09.2016 in respect of item Nos.1 to 9 of the properties, but withdrew the appeal on 21.02.2018 as not pressed, and

(5) the petitioners 1 and 2 filed SA No.113 of 2018 challenging the sale notice dated 18.1.2018 with respect to item Nos.8 and 9.

9. We have already pointed out that the petitioners are guilty of delay and latches in coming to Court in the year 2018 challenging the orders passed by the Chief Metropolitan Magistrate in November, 2015 and March, 2016. The petitioners are also guilty of forum shopping. After filing the above writ petition in February, 2018 in respect of four items of properties, *viz.,* items 5, 6, 8 and 9, the petitioners went before DRT in May, 2018 in SA No.113 of 2018, in respect of item Nos.8 and 9 and also obtained a conditional order of stay on 28.05.2018. It appears that the conditional order was complied with but we cannot approve of such a conduct on the part of the petitioners and even on this ground, the writ petition deserves to be dismissed.

10. On the first contention of the learned counsel for the petitioners about the failure of the Bank to plead the requirements of clauses (i) to (ix) of the first proviso under Section 14 (1)(b) of the Act, we should point out that in cases of this nature, the Court has to invoke the doctrine of substantial compliance. We find from the affidavit in support of the petitions under Section 14 of the Act, that there is substantial compliance. The affidavit contains details about the aggregate amount of financial assistance, the total claim of the bank, the creation of security interest, the commission of default in repayment, the issuance of demand notice, the issuance of possession notice etc. Therefore, there has been substantial compliance with the requirements of clauses (i) to (ix) of the first proviso to Section 14 (1) (b) of the Act. Hence, the first ground of attack is liable to be rejected.

11. The second contention is that the Chief Metropolitan Magistrate did not pass orders within thirty days from the date of application. But, this requirement was inserted in the second proviso to Section 14 (1) (b) of the Act by way of an amendment by Act 44 of 2016 with effect from 01.09.2016. The orders impugned in this writ petition were passed by the Chief Metropolitan Magistrate before the amendment. Hence, the second contention is also liable to be rejected.

12. The third contention is that the impugned order does not reflect the subjective satisfaction to be arrived at by the Magistrate as per Section 14 (1) (b) of the Act. But, this argument is liable to be

rejected for the simple reason that it is not possible to stipulate in a straight jacket formula the method of writing a judicial order that would reflect subjective satisfaction. The orders passed by the Magistrate in this case disclose that the Magistrate has gone by the overall pleadings and documents. Therefore, the third contention is also liable to be rejected.

13. Mr. P.S. Rajesekhar, learned counsel for the petitioners, contended that the affidavits in support of the petitions under Section 14 of the Act did not disclose whether the claim of the bank was within the period of limitation. Therefore, clause (ii) under the first proviso to Section 14 (1) (b) was not satisfied.

14. But, we do not think that a parrot like repetition of the ingredients of clauses (ii) under the first proviso to Section 14 (1) (b) of the Act is required. The affidavit shows that the demand notice under Section 13 (2) of the Act was issued on 27.06.2015. The demand notice discloses the creation of mortgage. The applications under Section 14 of the Act were filed within a few months of the issue of demand notice. Therefore, the claim was obviously within the period of limitation and it required no special pleading, just for the purpose of satisfying the letter of law indicated in clause (ii) of the first proviso to Section 14 (1) (b) of the Act.

15. Another contention raised by the learned counsel for the petitioner is that the reply given by the petitioner to the demand notice and the rejection of the same by the bank, was not pleaded in the

affidavit as required by clause (vii) of the first proviso to Section 14 (1) (b) of the Act.

16. It is true that the affidavits filed by the Bank in the applications under Section 14 of the Act, do not disclose the objections filed by the petitioners to the demand notice on 24.08.2015 and the rejection of the same by the Bank on 28.08.2015. But we do not think that the same would vitiate the orders passed by the Chief Metropolitan Magistrate. If the Bank had rejected the objections through the order passed under Section 13 (3A) of the Act and went ahead with the measures under Section 13(4) of the Act, the petitioner should have gone before the DRT challenging the possession notice under Section 13(4) of the Act. Having failed to do so, it is not open to the petitioner to subject the affidavits of the Bank to forensic examination.

17. Reliance was placed by the learned counsel for the petitioner on paragraph Nos.24 and 25 of the judgment of the Supreme Court in Standard Chartered Bank v. Nobel Kumar. But, as we have pointed out above, what is required to be seen is whether there was substantial compliance. Once there is substantial compliance and there is an indication in the order as to the application of mind on the part of the Magistrate, our scrutiny of the same under Article 226 of the Constitution of India should come to an end.

18. The challenge to the fresh sale notice issued on 18.02.2019 and published on 24.03.2019, is made only on the ground that the respondents could not proceed during the pendency of the above writ

petition. No independent grounds are raised. In any case, if there is a fresh cause of action, the petitioner should have gone only before the DRT.

19. In view of the above, the writ petition is devoid of merits and hence, it is dismissed.

The miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 23, 2019

KTL