IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4892 of 2019 (O&M)
Date of Decision: 15.10.2019

INDIABULLS HOUSING FINANCE LTD. *...Petitioner*

VS.

STATE OF HARYANA AND OTHERS *....Respondents*

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. V.K. Sachdeva, Advocate
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Mr. Aalok Jagga, Advocate,
for respondents No. 12 to 14.

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RAKESH KUMAR JAIN, J. (Oral)

The question involved in this petition is as to whether the District Magistrate, having been passed an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), has the jurisdiction to review his own order ?

Shorn off the unnecessary details, the petitioner is a secured creditor who had filed an application under Section 14 of the Act before the District Magistrate, Jind which was allowed vide order dated 30.04.2018 (Annexure P-2). Respondents No. 12 to 14, the borrowers, filed an application for the review of the order dated 30.04.2018. The said application has been allowed vide impugned order dated 21.12.2018 and thus, the present writ petition has been filed.

At the outset, counsel for the petitioner has relied upon a division bench judgement of this Court rendered in the case of ***Asset Reconstruction Company (India) Ltd.*** Vs. ***State of Haryana*** in ***CWP No. 16366 of 2016*** decided on 18.08.2017 in which a similar question was decided namely "*Whether the District Magistrate is competent to 'review' his own order or the one passed by his predecessor under Section 14 of the Act?* The said question has been answered therein as under:-

> *(27) The powers exercisable by a District Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the then District Magistrate, Sonepat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely, Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under which the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower's application dated 12.06.2016 or to pass the impugned orders dated 14.06.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must always be conferred by law either expressly or by necessary implication. The so-called reasons assigned by the successor District Magistrate, even if assumed to be correct, did not and can not clothe him with a non-existent power to review the order passed by him or his predecessor. [Ref. (i)* ***Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji (1971) 3 SCC 844****; (ii)* ***Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors. (2001) 6 SCC 512****].*

(28) It would be apt to cite a Division Bench decision of Allahabad High Court in ***Writ-C No.30899 of 2016 (Kotak Mahindra Bank Ltd. vs. State of UP & 4 others) decided on 21.10.2016****, where an identical question came up for consideration and the High Court viewed as follows:-*

> *"Be that it may, we are of the considered opinion that the District Magistrate has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are, therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed."*

We are respectfully in agreement with the view taken by the Allahabad High Court. Consequently, it is held that the District Magistrate, Sonepat had no authority or power to review the order dated 08.02.2016 and his subsequent orders being without any authority of law, cannot sustain."

Counsel for contesting respondents No. 12 to 14 has submitted that if the order is obtained by the secured creditor by way of a fraud then the District Magistrate has the jurisdiction to recall the said order.

We have heard counsel for the parties and after examining the record are of the considered opinion that the District Magistrate does not have any power to recall, review or modify his own order as has been held by this Court in the aforesaid decision rendered in the case of *Asset Reconstruction Company (India) Ltd. Vs. State of Haryana* (Supra). Since, the question of law is no more *res integra*, therefore, while deciding the question posed in the beginning of the order in favour of the petitioner, the impugned order dated 21.12.2018 is hereby set aside and it is reiterated that the District Magistrate has no jurisdiction to recall, review or modify his/her own order or the order passed by his/her predecessor as there is no provision in this regard in the Act. While holding the same, liberty is still with contesting respondents No. 12 to 14 to challenge the order dated 30.04.2018 in accordance with law.

In view of the above writ petition stands allowed.

[RAKESH KUMAR JAIN]
JUDGE

October 15, 2019
Ess Kay

[ARUN KUMAR TYAGI]
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No