**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP No.25487 of 2018
Date of Decision: 04.07.2019**

Sarva Haryana Gramin Bank, Ballabgarh .....Petitioner

Versus

District Magistrate, Faridabad and others .....Respondents

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

Present : Mr. Mukesh Kumar Gupta, Advocate for the petitioner.

Ms. Kirti Singh, D.A.G., Haryana.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioner Bank is aggrieved against the order dated 24.07.2018 passed by the District Magistrate, Faridabad on an application filed by the petitioner under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short, “the Act”) vide which instead of passing on order for delivering the possession of the property of the mortgager, waived of the loan on his own on the ground that the borrower is a poor person.

In brief, the petitioner granted the credit facility of ₹4.5 lakhs to respondent No.2 for the purpose of of purchase of stocks and repayment of debt and for repair of the house under GGB Mortgage Scheme. Respondent No.2 mortgaged his immoveable property in order to secure the amount of loan. The Bank also took guarantee from the borrower which was provided by Ajay Kumar son of Mahender Kumar, resident of House No.3720, MCF 6/5, Vishnu Colony, near Khera Dewat Mandir, Ballabgarh and Krishna son of Tribhuvan, Main Road, Near Khera Dewat Mandir, Ballabgarh. Since there was a default in payment of the instalments at the instance of the borrower, the account of the borrower was classified as Non-Performing Asset (for short, “NPA”) and the Bank issued a demand notice under Section 13(2) of the Act on 24.09.2015 recalling the entire loan amount of ₹4,48,513/-, which was calculated to be due on 01.08.2015. Since respondent No.2 did not pay the loan amount within the stipulated period, a notice under Section 13(4) of the Act was also issued on 01.02.2016 and thereafter proceedings were initiated under Section 14 of the Act by filing an application before the District Magistrate, Faridabad for taking over the possession of the property of the borrower. The District Magistrate has passed the impugned order dated 24.07.2018 which reads as under:-

> "Heard. Respondents have stated that they are poor persons and their financial position is very weak and they are unable to pay the loan amount to the bank. If any order for attachment of their property is passed, no useful purpose would be served keeping in view the financial position of the respondents. Therefore, bank may approach the Government to waive of the loan amount.
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> Accordingly, keeping in view the financial position of the respondents, loan amount is waived of.
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> With these observations, case stands disposed of accordingly. File be consigned to record room."

Counsel for the petitioner has submitted that the District Magistrate has committed an error of law by passing the impugned order as he does not enjoy the jurisdiction to give up the amount of loan which has been advanced to the borrower. It is submitted that the jurisdiction of the District Magistrate is limited to assist the secured creditor for taking possession of the secured assets.

No one has put in appearance on behalf of respondent

No.2(borrower) and respondents 3 & 4 (guarantors). The petition is contested by the State of Haryana on behalf of respondent No.1 who could not defend the impugned order, which is contrary to the Section 14 of the Act and rather the counsel for the State has submitted that the impugned order may be set aside and the matter may be remanded back to the District Magistrate to decide the same again in accordance with provisions of the Act.

After hearing counsel for the parties and keeping in view the facts and circumstances of the case much less the provisions of the Section 14 of the Act, the present petition is hereby allowed. The impugned order is set aside and the matter is remanded back to the District Magistrate, Faridabad to decide the application afresh under Section 14 of the Act in accordance with law.

The petitioner Bank is directed to appear before the District Magistrate, Faridabad on 19.07.2019. On appearance of the Bank before the District Magistrate, Faridabad and production of the certified copy of this order, he is further directed to decide the application filed under Section 14 of the Act within a period of one month.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

04.07.2019
Vinay

Whether speaking/reasoned Yes/No
Whether reportable Yes/No