NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 245 of 2020

Dcb Bank Limited Through Authorized Signatory Gassper Tigga, R/o Registered Office, 6th Floor, Tower A, Pan Business Park, Senapati Bapat Marg, Lower Parel, Mumbai, Branch Office Gani Plaza, Devendra Nagar, Raipur Chhattisgarh 492001, P. S. Devendra Nagar

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue, Governement Of Chhattisgarh, Secretariat, Mahanadi Bhawan, Naya Raipur 492001
2. District Magistrate Raipur Office Of District Collector, Raipur Chhattisgarh 492001
3. Roopram Sahu R/o House No. 252/1, Shikshak Colony, Urla, Abhanpur, District Raipur Chhattisgarh
4. Tulsiram Sahu R/o House No. 252/1, Shikshak Colony, Urla, Abhanpur, District Raipur Chhattisgarh
5. Phuleshwari Sahu R/o House No. 252/1, Shikshak Colony, Urla, Abhanpur, District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Bhavesh Acharya, Advocate
For State	:	Mr. V. R. Tiwari, Additional AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/02/2020

1. The relief sought for in the present writ petition is for an appropriate direction to the respondent No.2 to take an appropriate decision under Section 14 of the Sarfaesi Act of 2002 at the earliest.
2. According to the petitioner they are secured creditor in respect of the property that situates a in a portion of Khasra No.795/5 measuring 0.018 (36*56) = 2016 square feet at Village Urla Abhanpur, Tehsil

Abhanpur, Zila Raipur. According to the petitioner they had already issued a notice under Section 13(2) and Section 13(4) to the borrowers and subsequently they had moved an application under Section 14 along with an affidavit with 9 points as is required under proviso Clause 2 Section 14(1) ON 12.10.2018. But till date respondent No.2 has not passed any final order on the said application. Further grievance of the petitioner is that petitioners having moved an application under Section 14 the Magistrate has issued notice to the borrower which is not otherwise required as per the Proviso of Section 14 and by issuance of notice to the borrowers the matter is getting lingered on unnecessarily and therefore an appropriate direction be given to respondent No.2 to decide the matter at the earliest.

3. To this limited grievance that petitioner has raised counsel for the State does not have any objection.

4. So far as the proceedings drawn by respondent No.2 under Section 14 of the Sarfaesi Act is concerned, particularly on the issue whether notice has to be issued under Section 14 or not, it would be relevant at this juncture to refer to a recent Division Bench Judgment of the Madhya Pradesh High Court in the case of **Aditya Birla Finance Limited Vs. Shri Carnet Elias Fernandes Vermalayam** decided on 13.07.2018 wherein the Division Bench in very categorical terms in paragraph 27 to 29 have held as under :-

> "27. We do not find any merit in the said argument as well. The issue raised was a question of fact as to whether the petitioner is in possession of the W A No. 784/2018 property in question on the basis of lease agreement. The said judgment refers to the Supreme Court judgment reported as (2014) 6 SCC 1 (Harshad Govardhan Sondagar vs. International Assets Reconstruction Company Limited and others) to hold that such question is required to be decided while considering an

application under Section 14 of the Act. But, present is not a case where any such question is required to be decided. The property in question is mortgaged in favour of the appellant; therefore, it is a secured asset. In respect of secured assets, the District Magistrate is duty bound to hand over physical possession to the secured creditor in terms of Section 14 of the Act. Therefore, such judgment provides no assistance to the argument raised.

28. Coming to the argument that opportunity of hearing was not granted to the writ-petitioners and that the order passed by the District Magistrate violates the principles of natural justice is again not tenable. The Bombay High Court in a judgment reported as 2007 Cri LJ 2544 (Bom.) (Trade Well vs. Indian Bank) has held that the District Magistrate is not required to give notice either to the borrower or to the third party. He is only to verify from the Bank whether notice under Section 13(2) of the Act has been issued or not. The said judgment has been quoted with approval by the Supreme Court in a judgment reported as (2013) 9 SCC 620 (Standard Chartered Bank, etc. vs. V. Noble Kumar and others, etc), wherein it was held as under:-

> "**22**. However, the Bombay High Court in Trade Well v. Indian Bank [2007 Cri.L.J. 2544 (Bom.)] opined;
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> "2 ...CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the third party.
>
> 3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his jurisdiction. There is no adjudication W A No. 784/2018 of any kind at this stage.
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> 4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14."
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> (emphasis supplied)
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> The said judgment was followed by the Madras High Court in Indian Overseas Bank v. Sree Aravindh Steels Ltd. [AIR 2009 Mad. 10]. Subsequently, Parliament inserted a proviso to section 14(1) and also sub- section (1-A) by Act 1 of 2013.
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> *** *** ***
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> 25. The satisfaction of the Magistrate contemplated under the second proviso to section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an

> affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset."
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> 29. Thus, the proceedings under Section 14 of the Act are not proceedings to adjudicate the rights of the parties. Therefore, no notice is contemplated to be served upon the debtor, as such proceedings are taken only after serving notice under Section 13 of the Act."

5. The said view of the Division Bench was further reiterated by the Division Bench of the Madhya Pradesh High Court again in the case of DCB Bank Limited Vs. State of M.P. & Other, WPC 22260/18 decided on 10.10.2018 wherein the judgment of the Supreme Court in the case of Standard Chartered Bank, etc. Vs. V. Noble Kumar & Others etc), (2013) 9 SCC 62 and also in the case of Aditya Birla Finance Limited (Supra) was relied upon and held as under :-

> "We find that the order passed by the District Magistrate is unsustainable, for the reason that no notice to the borrower is contemplated. The petitioner has filed an application under Section 14 on 16.10.2017 and many opportunities were granted to the parties before passing the impugned order on 2nd August, 2018. The allegation of payment of Rs.10 Lakhs seems to be an effort made by the borrower without any proof or supportive document thereof. Therefore, we find that the District Magistrate was not justified in rejecting the claim of the petitioner for providing assistance to take possession of the secured assets in terms of Section 14 of the Act."

6. In view of the aforesaid decision and also considering the provisions of Section 14, this Court has no hesitation to hold that the need to notice the borrowers was not necessary or justified. However, since notice have been issued that present writ petition therefore can be disposed of directing the respondent No.2 to decide the application of the petitioner at the earliest preferably within a period of 60 days from the date of receipt of copy of this order.

7. With the aforesaid observations, the writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit