HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.18015 OF 2019

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Assailing the order, dated 20.07.2019, passed by the Chief Metropolitan Magistrate, Ranga Reddy District in Crl.M.P. No.530 of 2019 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and consequential notice, dated 02.08.2019, issued by the Advocate Commissioner, the present writ petition is filed by the petitioner.

2. Though the pleadings are lengthy and several documents have been filed by both sides, the question that falls for consideration by this Court is as to "whether the petitioner, claiming ownership of the subject property, is entitled for a notice under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act')".

3. The contentions of the petitioner:

i) He is the owner of semi-finished house on plot No.105, admeasuring 166.66 square yards in Survey No.76/A, situated at Thattiannaram Village, Hayathnagar Mandal, Ranga Reddy District, which is hereinafter referred to as 'subject property', having purchased the same under a registered sale deed bearing document No.3919 of 2007, dated 27.07.2007, from respondent No.3.

ii) After purchase of the subject property, he has made further construction with his own funds and there is a tenant in the said subject property.

iii) Respondent Nos.3, 4 and 5 in collusion with each other played fraud and cheated him by selling the mortgaged property to him and he lodged a complaint against them vide C.C. No.730 of 2013 on the file of the VII Metropolitan Magistrate, Cyberabad at Hayathnagar.

iv) He has also filed W.P. No.11016 of 2017 seeking a direction to transfer the said file to CBI for a detailed enquiry.

v) His tenant in June, 2012 informed him that an employee of respondent No.1 bank came to the subject property, handed over a Photostat copy of notice published in Deccan Chronicle English Daily Newspaper dated 04.06.2012, wherein it was mentioned that respondent No.5 was due an amount of Rs.8,68,084/- as on 17.02.2012 plus interest etc. In the said publication, it was also mentioned that respondent No.5 mortgaged the subject property with respondent No.1 bank.

vi) On coming to know about the said fact, he made enquiries and came to know that respondent Nos.3, 4 and 5 in collusion with each other cheated him by selling the mortgaged property to him and, therefore, he filed the aforesaid criminal complaint and thereafter filed the aforesaid writ petition for transfer of the said file to CBI for a detailed enquiry.

vii) He has also availed Housing Loan from Axis Bank. When respondent No.1 initiated proceedings under the Act, the said Axis Bank filed S.A. No.435 of 2017 under Section 17 of the Act, and the Debts Recovery Tribunal, Hyderabad, passed an order dated 09.03.2017 that the auction may go on, but the same should not be confirmed and sale certificate should not be issued to the highest bidder.

viii) On repayment of the entire loan to the Axis Bank by the petitioner, the said S.A. became infructuous and the Axis Bank withdrew it on 28.11.2018.

ix) In order to put a quietus to the litigation, vide letter dated 29.08.2018, he offered to pay a sum of Rs.9,50,000/- towards full and final settlement and requested respondent No.1 bank to consider the same. But, there was no response. Therefore, the petitioner filed S.A.I.R. No.473 of 2018 before the DRT, Hyderabad along with petition to condone the delay of 635 days.

x) According to him, respondent Nos.1 and 2 herein filed their counters in the main appeal as well as I.As. Respondent Nos.3, 4 and 5 were set *ex parte* pursuant to the public notice published in '*Andhra Jyothi*' Daily Telugu Newspaper on 13.03.2019.

xi) Thus, according to the petitioner, respondent Nos.1 and 2 are having knowledge about the ownership and claim of the petitioner over the subject property and the existence of tenant and without serving a notice and without disclosing the said fact in the petition filed by respondent No.1 bank under Section 14 of the Act, it obtained the impugned orders from the Court on 20.07.2019. Pursuant to the said order, the Advocate Commissioner issued a notice dated 02.08.2019 calling the petitioner and his tenant to hand over the possession of the subject property within fifteen days. Therefore, the action of respondent Nos.1 and 2 banks in obtaining the orders dated 20.07.2019 from the Criminal Court in Crl.M.P. No.530 of 2019 and the consequential notice dated 02.08.2019 issued by the Advocate Commissioner is in violation of the procedure laid down under Section 14 of the Act and the principle held by the Apex Court. Respondent No.1 bank suppressed the true and material facts while initiating the proceedings.

With the said contentions, the petitioner prayed to allow present writ petition

4. We have heard Mr. Nikunj Dugger, learned counsel, representing Mr. B. Vijaysen Reddy, learned counsel for the petitioner and Mr. Venkat Raghu Ramulu, learned standing counsel for respondent Nos.1 and 2.

5. It is not in dispute that the petitioner purchased the subject property under a registered sale deed bearing document No.3919 of 2007 dated 27.07.2007. There is a tenant at present in the subject property. On coming to know about the public notice published in 'Deccan Chronicle' English Daily Newspaper dated 04.06.2012, he made enquiries and came to know that respondent Nos.3, 4 and 5 in collusion with each other, cheated him by selling the subject property mortgaged to Central Bank of India (respondent No.1 herein) and then he set the criminal law into motion against them by filing C.C. No.730 of 2013.

6. Vide letter dated 29.08.2018, he offered to pay a sum of Rs.9,50,000/- to respondent No.1 bank and requested to settle the dispute. Admittedly, respondent No.1 having received the said letter, but did not respond to it.

7. Respondent No.1 initiated proceedings under the Act, and the Axis Bank, which extended loan to the petitioner, also filed S.A. No.435 of 2017 and the DRT, Hyderabad passed an order permitting respondent No.1 bank to proceed with sale, but not to confirm the same and not to issue sale certificate to the highest bidder.

8. Since there was no response from respondent No.1 bank pursuant to his offer vide letter, dated 29.08.2018, the petitioner filed S.A.I.A. No.473 of 2018 on 31.12.2018 with a petition to condone the delay of 635 days. Respondent Nos.1 and 2 received notices, entered their appearance and filed counters in the main appeal as well as in I.As. The said facts would show that respondent Nos.1 and 2 are having knowledge that the petitioner purchased the subject property under the above sale deed.

9. Admittedly, respondent No.1 bank filed an application under Section 14 of the Act before the Chief Metropolitan Magistrate, Ranga Reddy on 03.05.2019 against respondent No.5, his wife and 2 others without making the petitioner as party and without mentioning the claim of the petitioner for the subject property. Respondent No.1 bank did not mention the proceedings initiated by the Axis Bank, from where the petitioner obtained housing loan, and also pendency of the appeal filed by the petitioner vide SAIR 473 of 2018.

10. It is relevant to mention that in the reply filed by respondent No.1 in SAIR No.473 of 2018, filing of SA No.435 of 2017 by Axis Bank and its dismissal on 28.11.2018 are mentioned. But, the said fact was not mentioned in the application filed under Section 14 of the Act.

11. The above stated facts would show that respondent No.1 bank is having knowledge of purchase of subject property by the petitioner herein. Respondent No.1 bank, without making the

petitioner as one of the respondents, filed the petition vide Crl.M.P. No.530 of 2019 under Section 14 of the Act before the CMM Court, Ranga Reddy, to appoint advocate commissioner to take possession of the subject property. In our view, there is a clear suppression of fact by respondent No.1 bank while filing the application in Crl.M.P. No.530 of 2019 under Section 14 of the Act.

12. Admittedly, respondent No.1 bank obtained orders on 20.07.2019 from CMM Court, Ranga Reddy in Crl.M.P.No.530 of 2019 and the consequential notice dated 02.08.2019 by the Advocate Commissioner behind back of the petitioner by suppressing the material facts.

13. It is relevant to extract Section 14 of the Act, which is as under:

> "**14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.—**(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) xxxxxxxxxx
(ii) xxxxxxxxxx
(iii) xxxxxxxxxx
(iv) xxxxxxxxxx
(v) xxxxxxxxxx
(vi) xxxxxxxxxx
(vii) xxxxxxxxxx
(viii) xxxxxxxxxx
(ix) that the provisions of this Act and the rules made there-under had been complied with:

(1A) xxxxxxxxxx

(2) xxxxxxxxxx

(3) xxxxxxxxxx"

14. As per the first proviso to sub-section (1) of Section 14 of the Act, the secured creditor shall mention all the facts as enumerated under (i)) to (ix). Further, the Authorized Officer shall affirm in the affidavit filed in support of the petition that the provisions of the Act and Rules made there-under had been complied with.

15. In the present case on hand, though respondent No.1 bank is having knowledge by that date, it intentionally did not mention the subsequent facts, such as filing of S.A. No.435 of 2017 by Axis Bank and SAIR No.473 of 2018 by the petitioner herein, offer letter, dated 29.08.2018, by the petitioner to pay a sum of Rs.9,50,000/- etc. in the affidavit filed in support of petition under Section 14 of the Act. But,

respondent No.1 bank only referred the earlier proceedings initiated by it including notices under Sections 13 (2) and 13 (4) of the Act and notice under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 (for short 'Rules').

16. Curiously, respondent No.1 bank mentioned in the petition under Section 14 of the Act that as on 22.05.2019, an amount of Rs.9,67,863/- was the liability and future interest and expenses etc. Thus, respondent No.1 bank obtained the above said order, dated 20.07.2019 in Crl.M.P.No.530 of 2019 from CMM Court, Ranga Reddy district and the consequential notice from the Advocate Commissioner by suppression of facts and has acted in clear violation of provisions of Section 14 of the Act.

17. In the counter filed by respondent Nos.1 and 2, they would contend that there is no irregularity or illegality committed by the bank in obtaining the order dated 20.07.2019 and the consequential notice dated 02.08.2019.

18. It is relevant to mention that respondent No.1 bank has filed order, dated 25.09.2014, in S.A. No.255 of 2014 passed by DRT, Hyderabad filed by Sri Laxmi Ganapathi Constructions. They neither stated about the said two applications filed by Axis Bank and the petitioner before the DRT and the letter, dated 29.08.2018 submitted by the petitioner offering his readiness to pay Rs.9,50,000/-. According to them, the petitioner herein purchased the subject property after its mortgage by respondent No.5 and, therefore, there is

no need of any notice required to be given to the petitioner under Section 14 of the Act. In this context, it is relevant to extract *'explanation I'* to Section 3 of the Transfer of Property Act, which is as under:

> " *Explanation I,-* Where transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:-----"

19. As discussed above, the petitioner purchased the subject property under a registered sale deed bearing 3919 of 2007, dated 27.07.2007. Therefore, in view of the above *'explanation-I'*, respondent No.1 bank shall be deemed to have notice of such instrument/transaction from the date of its registration. Even otherwise, in the present case, the evidence indicates that respondent No.1 bank is having knowledge of purchase of the subject property by the petitioner and his interest over the same. Therefore, the contention of respondents that there is no need of putting the notice to the

petitioner and making him as a party to the application under Section 14 of the Act is unsustainable.

20. The petitioner relied upon the principle laid down by a Division Bench of this Court in **Sri Balaji Centrifugal Castings, Sec.bad v. ICICI Bank Ltd., Hyderabad**[1], wherein this Court by referring the judgment of the Apex court in **Standard Chartered Bank v. Noble Kumar**[2] held that it is the duty of the secured creditor to mention all the facts in the affidavit filed by it along with petition under Section 14 of the Act. Though the Magistrate is not having power to adjudicate under Section 14 of the Act, he plays a limited administrative role of verifying certain factual aspects only. The application under Section 14 of the Act is for a limited purpose of verifying the contents of the affidavit filed by the secured creditor in the context of clauses (i) to (ix) stipulated under the first proviso to Section 14 of the Act. By referring to the power of the Magistrate under the said provision, the Division Bench of this Court held that it is the duty of the secured creditor to mention the entire facts including encumbrances on the scheduled property in the affidavit filed in support of the petition filed under Section 14 of the Act. The Apex Court in **Standard Chartered Bank**[2] also held that mentioning of entire facts including encumbrance of the property is mandatory. Whereas, in the present case, admittedly, respondent No.1 bank despite knowing the interest and claim of the petitioner over the

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[1]. 2018 (5) ALD 376 (DB)
[2]. (2013) 9 SCC 620

subject property, intentionally did not mention the said fact including the earlier proceedings initiated by Axis Bank and the petitioner in the affidavit filed in support of the petition filed under Section 14 of the Act and obtained impugned orders dated 20.07.2019 in Crl.M.P. No.530 of 2019 from the CMM Court, Rangareddy District and the consequential notice dated 02.08.2019 issued by the Advocate Commissioner is in utter violation of the procedure laid down under the Act and also the principle held by the Apex Court followed by this Court referred to supra.

21. Accordingly, the present Writ Petition is allowed; the order dated 20.07.2019 passed in Crl.M.P. No.530 of 2019 by the Chief Metropolitan Magistrate, Rangareddy District, and the consequential notice dated 02.08.2019 issued by the Advocate Commissioner, are hereby set aside. However, it is left open to respondent No.1 bank to initiate proceedings to recover the amount due to it. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

08th January, 2020
Mgr