NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 3201 of 2017

1. M/s Shivansh Enterprises A Represented Thru One Its Partners Mr. Dev Prakash Tripathi S/o Late Shri Ram Achal Tripathi Aged About 47 Years R/o 71/8 Nehru Nagar West Bhilai District Durg Chhattisgarh

2. Dr. Chandra Prakash Tripathi, S/o Late Shri Ram Achal Tripathi, Aged About 49 Years R/o 71/8 Nehru Nagar West , Bhilai District Durg, Chhattisgarh

3. Dev Prakash Tripathi, S/o Late Shri Ram Achal Tripathi, Aged About 47 Years R/o 71/8, Nehru Nagar West Bhilai District Durg Chhattisgarh

4. Ravi Prakash Tripathi, S/o Late Shri Ram Achal Tripathi, Aged About 45 Years R/o 71/8 Nehru Nagar West , Bhilai District Durg, Chhattisgarh

5. Smt. Anjana Tripathi, W/o Shri Chandra Prakash Tripathi, Aged About 44 Years R/o 71/8 Nehru Nagar West , Bhilai District Durg, Chhattisgarh

---- Petitioners

Versus

1. Kotak Mahindra Bank Limited Successor Of Ing Vysya Bank Thru The Authorized Officer, Satyam Apartment Gujarat Bhawan, 8, Wardha Road, Dhantoli Nagpur District Nagpur Maharashtra Pin 440012, Maharashtra

2. The Authorized Officer, Kotek Mahindra Bank Limited, 27 B. K. C. 27 G Block Bandra Kurla Complex Bandra East Mumbai 400051

3. The Branch Manager, Kotak Mahindra Bank Limited, Nehru Nagar, Bhilai District Durg Chhattisgarh

4. The Collector And District Magistrate, Durg District Durg Chhattisgarh

---- Respondents

For Petitioners	:	Shri Sunil Sahu, Advocate
For Respondents No.1 to 3	:	Shri P. R. Patankar, Advocate
For Respondent No.4/State	:	Ms. Sameeksha Gupta, Panel Lawyer

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Hon'ble Shri Justice Goutam Bhaduri

Order

08/09/2021

1. The challenge in this petition is to the order dated 26.11.2016 whereby the possession of the secured property has been directed to be taken over under Section 14 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').
2. Learned counsel for the petitioner places his reliance in the case of **Standard Chartered Bank Vs. V. Noble Kumar and Others** reported in **(2013) 9 SCC 620** and would submit that at Para 25 of the judgment it has been laid down that to 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 affidavit under Section 14 of the SARFAESI Act. Per contra learned counsel for the respondent would submit that the petitioner has already filed SA before the Presiding Officer, DRT, Jabalpur bearing No.156/2016, wherein he may raise all the grounds, therefore, there cannot be a simultaneous adjudication by this Court.
3. Perused the documents.
4. Perusal of the documents shows that already an application under Section 13 of the SARFAESI Act has been filed by the petitioner before the DRT. It appears that in the meanwhile the District Magistrate has passed an order on 26.11.2016 while such proceeding is pending before the DRT, which is under challenge in this petition.
5. Since the challenge in this petition is to an order passed by District Magistrate u/s 14 of the SARFAESI Act , the law declared by Supreme Court for interference by this Court under Article 226 of the Constitution of India is narrowed down. The Supreme Court in the case of **K. Virupaksha And Another Vs. State of Karnataka and Another** reported in **(2020) 4 SCC 440** has laid down that the SARFAESI Act is a complete code in itself which

provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties and it has also been laid down that the DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act.

6. Para 15 of the **K. Virupaksha And Another Vs. State of Karnataka and Another** reported in **(2020) 4 SCC 440** reads as under:-

> "The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, the DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of SARFAESI Act. This view is fortified by the decision of this Court in the case of Indian Overseas Bank Vs. Ashok Saw Mill (2009) 8 SCC 366.
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> "34. The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of subsection (4) of Section 13.
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> 35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in subsection (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such

measures having taken for the reliefs indicated in subsection (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including subsection (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a postSection 13(4) situation, cannot be accepted." (emphasis supplied)

7. Further the Supreme Court in the case of **C. Bright Vs. District Collector and Others** reported in **(2021) 2 SCC 392** recently has held as under:-

22. Even though, this Court in United Bank Of India V. Satyawati Tondon held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/ institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Hindon Forge (P) Ltd has held that the remedy of an

aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court under Articles 226 nor 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when effective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditors as interim orders defeat the very purpose of expeditious recovery of public money.'

8. In the facts of this case since the petitioner has challenged the order passed by the District Magistrate, the same could have been raised as further ground before the DRT. The petitioner made challenge the order dated 26.11.2016 passed under the SARFAESI Act by certain amendment in SA No.156/2016 or by separate petition.

9. Under the circumstances, it is directed that the petitioner may challenge the order dated 26.11.2016 before the DRT Jabalpur by making necessary amendment in SA NO. 156/2016 which is pending before the DRT, Jabalpur or by any individual separate petition. The petitioner shall also require to move necessary application for urgent hearing within a period of 3 weeks and if such applications are filed, the DRT, Jabalpur which is functioning through Lucknow shall hear the application of the petitioner. The application of like nature if so filed within stipulated period the DRT may proceed to hear the application as according to its convenience. Since considerable time has passed as on this date, this Court is not inclined to issue any order of stay of order dated

26.11.2016. The petitioner may raise the ground and pray for interim relief in given set of facts before the DRT, if appropriate applications are filed. The respondent Bank shall also be entitled to move for any urgent hearing if so advised in given case.

10. Registry is directed to return the certified copy of the order dated 26.11.2016, after retaining the photo copy of the same.

11. With the aforesaid observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

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