HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1691 of 2021

1. B. Neerja Rao D/o Shri B. K. Raju, Aged About 32 Years R/o Kamraj Building, Jagmal Block, Plot Khasra No. 711, Post Office Railway Bilaspur, District Bilaspur Chhattisgarh
2. B. Mrinalini Rao D/o Shri B. K. Raju Aged About 29 Years R/o Kamraj Building, Jagmal Block, Plot Khasra No. 711, Post Office Railway Bilaspur, District Bilaspur Chhattisgarh
3. G. Rupal Kumar W/o G. Anant Kumar Aged About 33 Years R/o Butibada, Tilak Nagar, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioners

Versus

1. District Magistrate, Bilaspur, District Bilaspur Chhattisgarh
2. Allahabad Bank (Now Merge In Indian Bank) Through Branch Manager, Vyapar Vihar Branch, Bilaspur, District Bilaspur Chhattisgarh
3. Pankaj Bajoriya, Proprietor Of M/s Khatu Shyam Traders S/o Sawarmal Bajoriya Aged About 38 Years, R/o Near Parl Kutti House, Mitra Vihar Colony, Infront Of Garden, Link Road, Bilaspur, District Bilaspur Chhattisgarh
4. B. K. Raju S/o Late B. Satya Rao Aged About 65 Years R/o Kamraj Building, Jagmal Block, Plot Khasra No. 711, Post Office Railway Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For petitioners- Shri Shrawan Agrawal, Advocate.

For State – Shri Gagan Tiwari, Dy.G.A.

For respondent No.2 – Shri Saleem Kazi, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/03/2021

Heard.

1. The challenge in this petition is to the order dated 19/03/2018 passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') wherein possession of the property mortgaged has been directed to be handed over to the secured creditor i.e. the bank respondent No.2.

2. Learned counsel for the petitioners would submit that the petitioners No.1, 2

and 3 are the legal heirs of respondent No.4 B.K. Raju, despite the fact the daughters and the wife have a undivided right in the property which was sold to one Pankaj Bajoriya the respondent No.3 in the year 2014, Pankaj Bajoriya who purchased the property subsequently obtained the loan by creation of mortgage of the same property with Allahabad Bank the respondent No.2. Subsequently, the borrower Pankaj Bajoriya made a default. Consequently, it lead to proceeding under Section 13(2) of the SARFAESI Act. It is stated that the petitioners are in possession of the subject property for which section 14 orders have been passed and he would submit that it is a case of conspiracy in between the borrower and the bank and the petitioners who are still in possession of the property were neither noticed nor have any inclinch of the fact that by mortgage of the property i.e. the house the loan was obtained. Therefore, order dated 19/03/2018 be stayed.

3. Per contra, learned counsel for the respondent No.2 opposes the argument and would submit that the measures under Section 13 of the SARFAESI Act having been taken, section 14 is a consequential proceeding wherein possession are being obtained that too the order is of the year 2018 and the petitioners if at all are aggrieved can very well approach to the DRT under Section 17 of the SARFAESI Act.

4. Having perused the documents it appears that respondent No.4 B.K. Raju has executed a sale deed in favour of Pankaj Bajoriya in respect of his house. The purchaser subsequently mortgaged the said property with the bank. In the course of time, the borrower committed default. In a result, the property turned into non performing asset for which after due notice under Section 13 of the SARFAESI Act, the measures were taken under Section 14 of the SARFAESI Act. The SARFAESI Act being the code in itself the petitioners if at all are aggrieved by any action of the bank, then they can very well approach under Section 17 of the SARFAESI Act to the DRT.

5. The section 17 of the SARFAESI Act starts with the word 'any person (including the borrower)' therefore the petitioner can be very well within the ambit

of any person who can file the appeal before the DRT against the measures under Section 13 of the SARFAESI Act. The Supreme Court in case of **K. Virupaksha and another Vs. State of Karnataka and another** reported in **(2020) 4 SCC 440** has observed 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 including the borrower. In a consequence 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 sub-section (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. In a result, the petitioners can very well approach to the DRT for redressal of the grievance. Since alternate forum is available, I am not inclined to entertain this petition.

6. Accordingly, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

gouri