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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2064 of 2021

Bank Of Baroda, Through Its Authorised Officer- Mr. Surendra Singh Parihar, S/o. Shri Govind Singh Parihar, Aged 59 Years, Address : Bank Of Baroda, Zonal Stressed Asset Recovery Branch, Opp. Manas Bhawan, Jabalpur, District Jabalpur (M.P.) Pin Code 482002

---- Petitioner

Versus

1. District Magistrate Cum Collector, Baloda Bazaar- Bhatapara, Office Of District Magistrate, District Baloda Bazar-Bhatapara, Chhattisgarh

2. M/s. J. P. Traders, Through Its Proprietor, Bharti Tharani, W/o. Shri Ajeet Tharani, R/o. Matadevalaya Ward, Village Rajadhar, Bhatapara Tehsil Bhatapara, District Baloda Bazar -Bhatapara, Chhattisgarh

3. Ajeet Tharani, S/o. Shri Shankarlala Tharani, R/o. Matadevalaya Ward, Village Rajadhar, Bhatapara Tehsil Bhatapara, District Baloda Bazar -Bhatapara, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Shreyas Dubey, Advocate
For Respondents/State	:	Smt. Richa Shukla, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

10.06.2021

Heard

1. Grievance of the petitioner is that the application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 *(for short 'the SARFAESI Act)* was filed on 09.09.2020 and in such application the proceeding commenced in the month of September, 2020. It is submitted that considerable time has passed and proviso of Section 14 of the SARFAESI Act provides that the decision on the like nature of application to be concluded within a period of 30 days and if not so, within a further period of 60 days, however, despite that from September, 2020 though the period has lapsed, the proceedings under Section 14 of the SARFAESI Act has not been concluded.

2. I have heard learned counsel for the petitioner and perused the documents.

3. Proviso clause of Section 14 of the SARFAESI Act reads as under:-

> "[1][Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor, declaring that-
>
> i. the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
>
> ii. The borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
>
> iii. the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
>
> iv. The borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
>
> v. consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;
>
> vi. affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;
>
> vii. the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;
>
> viii. the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;
>
> ix. that the provisions of this Act and the rules made thereunder had been complied with:
>
> Provided further that on receipt of the affidavit

from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application.]

[Provided [also] that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.]

[(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto;

and

(ii) to forward such assets and documents to the secured creditor.]

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate of the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

4. The SARFAESI Act provides that when Section 14 is moved, the officer shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application and if he fails to do it then the said period of thirty days may further extend to sixty days but shall not exceed which aggregate to sixty days. The SARFAESI Act further provides that the reasons shall also be recorded in the order. Prima facie the document shows that sixty days time has already exceeded, therefore, the District Magistrate is directed to conclude the proceeding under Section 14 of the SARFAESI

Act within a further period of 45 days from the date of receipt of the copy of this order.

5. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge

Aks