HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2717 of 2021

- Ashok Kumar Tripathy S/o Surendra Kumar Tripathy Aged About 45 Years R/o Plot No. 55, Priyanka Nagar, Ward No. 63, Risali, Bhilai , Tehsil Bhilai, District Durg, Chhattisgarh 490006.

---- Petitioner

Versus

1. The State Of Chhattisgarh Through The Collector , Durg, District Durg, Chhattisgarh.
2. The Superintendent Of Police Durg, District Durg Chhattisgarh.
3. The Tehsildar Durg, District Durg Chhattisgarh.
4. The Authorised Officer, UCO Bank Branch Sector 1, Bhilai District Durg, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Ashwin Panickar, Advocate
For Respondent/ State	:	Shri Gagan Tiwari, Dy. G.A.
For Respondents No. 4	:	Shri P.R. Patankar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

07.07.2021

Heard

1. The challenge in this petition is to the order dated 05.03.2021 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. He would submit that in the instant case the affidavit and the application under section 14 of the SARFAESI Act the date of taking over symbolic possession is shown to be 14.05.2019 whereas the affidavit before the DRT under Section 13 (4) of the SARFAESI Act the date of taking over symbolic possession is said to be on 04.05.2019. Therefore, there is difference in dates of taking of symbolic possession. Consequently, before passing the order dated 05.03.2021, the District Magistrate under Section 14 of the SARFAESI Act should have verified the factual aspect. It is further submitted that even otherwise in the DRT no substantial hearing is taking place as the Presiding Officer of the DRT is non-functional and its charge is with Lucknow DRT and hearing is extremely difficult.

3. Learned counsel for respondent/ Bank would submit that the petitioner has already filed an SA before the Presiding Officer DRT, Jabalpur bearing No. 349 of 2020 wherein this ground has already been taken at ground No. "e" that different dates have been shown for taking the symbolic possession and have been stated that manipulation has been done to make the date from 04.05.2019 to 14.05.2019.

4. Perused the documents.

5. Perusal of the documents show that issue is in respect of the fact that different dates have been shown in affidavit & original application filed by the Bank, the petitioner has already challenged entire action of Section 13 of the

SARFAESI Act before the DRT wherein the ground with respect to the different dates about taking over symbolic possession of property on 04.05.2019 and 14.05.2019 has been raised as a ground. It appears that in the meanwhile, the District Magistrate has passed the order dated 05.03.2021 (Annexure P-7) while such proceeding is pending before DRT, Jabalpur. It appears no substantial regular hearing is taking place at DRT, Jabalpur for want of Presiding Officer and charge is with Lucknow, DRT.

6. 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 to interfere 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** 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.

7. 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.

"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.

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 sub-section (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)

8. 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.'

9. In the facts of this case, the petitioner has already challenged the issue of depicting different dates before the DRT and has raised the same by way of ground. The DRT has been stated as not fully functional at Jabalpur wherein the petition has been filed and is looked after by the Presiding Officer at DRT Lucknow that too by Virtual hearing. In such eventuality, the petitioner may challenge the order dated 05.03.2021 passed under Section 14 of the

SARFAESI Act passed by the District Magistrate by necessary amendment in SA No. 349 of 2020 inasmuch as ground has already been taken of the subject issue. But at the same time if normal hearing is not taking place before the DRT then in such case the petitioner can not be made to suffer for no hearing of any petition which are subject of challenge.

10. Under the circumstances, it is directed that the petitioner may challenge the order dated 05.03.2021 before the DRT Jabalpur by making necessary amendment in SA NO. 349 of 2020 which is pending before the DRT, Jabalpur or by any individual 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 for amendment, if any, or any fresh petition. The application of like nature if so filed within stipulated period the DRT may proceed to hear the application as according to its convenience. Till the period the applications are preferred before the DRT and are heard, there shall be stay of the order dated 05.03.2021 (Annexure P-7). The respondent Bank shall also be entitled to move for any urgent hearing if so advised in given case.

11. Registry is directed to return the certified copy of the order dated 05.03.2021 (Annexure P-7), after retaining the photo copy of the same.

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

Sd/-

(Goutam Bhaduri)

Judge

Jyoti