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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18676-2021
Date of Decision:20.09.2021

M/s Gramin Utthan Siksha Samiti through its Chairman

...Petitioner

Versus

District Magistrate, Gurugram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Ajay Ghangas, Advocate,
for the petitioner.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

By way of filing the present writ petition under Article 226 of the Constitution of India, petitioner, *inter alia*, prays for quashing of the impugned order dated 04.08.2021 (P-3) passed by the District Magistrate, Gurugram, directing the concerned Tehsildar to provide official assistance for taking and delivering physical possession of the property as described in the said order (P-3) to the respondent-Bank.

The petitioner, a registered Samiti, is running an educational institution in the name of M.D. Senior Secondary School for imparting education and other related services. The petitioner had availed total financial assistance amounting to Rs.1.89/- Crores from the respondent-Bank. Against the said loan, the petitioner had mortgaged the property as described in the order dated 04.08.2021 (P-3). The petitioner had been regularly paying the installments but due to scarcity of funds, it could not pay some of the installments of loan amount timely and therefore, its account became irregular. On an application filed under Section 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act") by the respondent-Bank, the District Magistrate, Gurugram, directed initiation of the proceedings for taking possession of the property in question vide order dated 04.08.2021 (P-3).

Learned counsel for the petitioner submits that respondent No.1-District Magistrate, Gurugram has wrongly allowed the application filed by respondent-Bank without considering the facts and circumstances of the case. He further submits that petitioner never received any notice under Section 13(2) of the SARFAESI Act. Thus,he prays for acceptance of the present writ petition.

We have heard learned counsel for the petitioner at length and perused the case file.

This Court in **CM No. 3178-CWP of 2021 IN CWP No. 4916 of 2020** (Allahabad Bank, Branch at Industrial Area A, Link Road, Ludhiana *Versus* District Magistrate, Ludhiana and others) decided on 06.09.2021 has broadly laid down the principles as regards the scope of functions of the District Magistrate while exercising powers under Section 14 of the SARFAESI Act, which read as under:-

> ***"(i)*** *District Magistrate would not involve in any process of adjudication of any inter se rights of the parties, while*

examining any application under Section 14 of the Act, 2002.

(ii) *Proviso to Section 14 makes it mandatory to record satisfaction by the District Magistrate which is to be restricted with regard to the factual correctness of the 9-point affidavit to be filed by the secured creditor. It cannot examine the legal validity of the steps so taken by the secured creditor as depicted in the affidavit. If the borrower is aggrieved of such steps the remedy would be to approach the DRT.*

(iii) *If any person is aggrieved of the order of the District Magistrate, the aggrieved person can approach the Debts Recovery Tribunal, under Section 17 of the Act, 2002 as an order passed under Section 14 is in pursuance to the steps provided under Section 13(4).*

(iv) *In case, if the District Magistrate fails to pass the order in terms of what is provided under Section 14 of the Act, 2002 or if the same is not being implemented, the secured creditor would have the remedy of invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.*

(v) *After the order is passed by the District Magistrate, the officer so deputed to execute the said order under Section 14 (1A) of the Act, 2002 would also complete the process of its execution within 60 days from the date of receipt of such order. Further in case if for any reason, the order is unable to be executed, the officer shall report the matter back to the District Magistrate, who would then pass such suitable orders as the situation may warrant.*

(vi) *Though, there is no provision for an advance notice to be given to the occupant / owner of the property before taking physical possession, but it would be desirable, that an advance notice of at least 15 days be served on the occupant before taking physical possession by the officer so deputed by the District Magistrate, so that persons to be dispossessed are not* *caught unawares."*

Keeping in view the above-said principles as laid down in **Allahabad Bank's case (supra)**, this Court is of the considered view that the petitioner has efficacious remedy available before the appropriate authority i.e. Debt Recovery Tribunal. The law in this regard is settled that when appropriate forum is provided under the SARFAESI Act, this Court stands injuncted from interfering with any matter arising out of the proceedings under the SARFAESI Act.

In view of the above, the present writ petition is dismissed being not maintainable. However, the petitioner is relegated to avail its alternative remedy available before the appropriate forum, in accordance with law.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

20.09.2021
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO