IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207 **CWP-30976-2019 (O&M)**
Date of Decision: 24.11.2021.

Indian Overseas Bank ....Petitioner.

Versus

District Magistrate, Sangrur and others ...Respondents.

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CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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Present: Mr. K.K. Goel, Advocate for the petitioner.

Mr. Pankaj Gupta, Additional Advocate General, Punjab for respondents No.1 to 3.

Mr. Anna Bansal, Advocate for respondents No.4 and 5.

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M.S. RAMACHANDRA RAO, J. (Oral)

In this writ petition, the petitioner assailed order dated 01.08.2019 passed by respondent No.3 giving certain reasons for not implementing order dated 02.04.2019 passed by respondent No.1 under Section 14 of the SARFAESI Act to take over possession of secured assets/ mortgaged properties belonging to M/s J.R. Solvent Industries Pvt. Ltd, Udhawal Road, Sangrur, which assets belong to the borrowers/guarantors of the said borrowers.

In the impugned order dated 01.08.2019 passed by respondent No.3, respondent No.3 has referred to the order dated 02.04.2019 passed by respondent No.1, but after referring to stay order passed by Additional Civil Judge (Senior Division), Sangrur, at the instance of one Balbir Singh, respondent No.3 mentions that the said Balbir Singh cannot be dispossessed and so physical possession of the property cannot be taken.

In ***Allahabad Bank Vs. District Magistrate, Ludhiana and others, passed on 06.09.2021 in CM-3178-CWP-2021 in CWP-4916-2020*** Division Bench of this Court considered the provisions of SARFAESI Act, 2002 and the power of the Civil Court as well and opined that the Civil Court would not have jurisdiction to negate a secured creditor' rights under the SARFAESI Act, qua the secured assets in a Civil Suit or proceedings instituted by the borrower/guarantor or any 3rd party; and the said dispute would specifically fall within the ambit of jurisdiction of Debt Recovery Tribunal under Section 17 of the said Act.

It held that any order passed by the Civil Court would bind only those, who are arrayed as a party to the Civil Suit and rights of a third party, who is not a party to the Civil Suit cannot be said be adversely effected by an order passed by the Civil Court; and if a secured creditor is not impleaded as a party in the suit, the order of the Civil Court will not bind it.

The Bench held that if the secured creditor is not a party in the Civil Suit entertained by the Civil Court, the Civil Court has to be understood to be adjudicating only the dispute between the two private parties in the suit and not with respect to the entitlement of the secured creditor to enforce the secured asset, even though the suit may involve rights upon secured/mortgaged asset.

It held that order of attachment before judgment passed under Order 38 Rule 5 CPC, would also not effect the rights of the secured creditors to take physical possession.

The Division Bench went on to clarify that the District Magistrate, while exercising jurisdiction under Section 14 of the Act, has to confine himself with regard to the factual correctness of the affidavit filed by the secured creditor before him and his jurisdiction cannot be stretched to include any quasi judicial or an adjudicatory function. It clarified that orders passed by District Magistrate under Section 14 of the Act, are only administrative act and do not involve any adjudication of the rights of the respective parties.

It, however, directed that if a third party is in possession of the property, it is desirable that the Officer deputed by the District Magistrate, to take actual physical possession, should give a notice of 15 days so that the occupant is not taken by surprise and if the occupant is so advised, he can approach the Debt Recovery Tribunal under Section 17 of the Act, 2002.

It emphasized that the District Magistrate should keep in mind the object of the Act, which is to ensure speedier recovery of public money and he should not only pass an order under Section 14 of the Act, within 60 days of the application under the said provision for said relief moved before him, he should also ensure that his order is implemented within 60 days of its passing; and the Officer deputed by the District Magistrate, should ensure completion of the process of execution within 60 days from the date of receipt of such order it held as under:-

> " In view of the aforesaid discussion, in our opinion, following principles would emerge as regards the scope of functions of the District Magistrate while exercising powers under Section 14 of the Securitisation Act, 2002:-
>
> (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.
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> (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 atleast 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."

Having regard to these principles laid down in the said decision, we are of the opinion that the reasons assigned by respondent No.3 for refusing to implement the order dt.02.04.2019 passed by respondent No.1, are not valid in law since the stay order, if any, obtained by Sh. Balbir Singh from the Additional Civil Judge (Sr. Divn.), Sangrur, in the Civil Suit filed by him, cannot be said to come in the way of the petitioner-bank, which is the secured creditor, to enforce its security interest in respect of the subject property and it cannot be an impediment for implementing order dated 02.04.2019 passed by respondent No.1. Any other stay orders, attachment orders, injunction orders obtained by third party or borrowers or other persons including tenant, claiming interest in the subject property from the Civil Court, would have no effect.

Accordingly, the writ petition is allowed. The order dated 01.08.2019 passed by respondent No.3 is quashed and respondent No.3 is directed to execute the order dated 02.04.2019 passed by respondent No.1 within two weeks from the date of receipt of a copy of this order, after issuing notice to the petitioner and also to any other person in occupation of the property, and then hand over the possession of the same to the petitioner. Any delay on the part of respondent No.3 in implementing the order dated 02.04.2019 to respondent No.1, will be viewed seriously.

No costs.

Copy of this order be supplied both sides.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

24.11.2021.
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Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No