IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.33579 of 2022

Canara Bank
Rep. by its Authorised Officer/Chief Manager
Praveen Kumar
Salem Fort Main Branch
Post Box No.20, Fort Main Road
CSI Compound
Salem 636 001. .. Petitioner

Vs.

1. M/s. JJD Fiber Products
   Prop. D.Abinav
   5/30A, Jodukuzhi, Gundukkal Village
   Kadayampatti
   Salem 636 351.

2. Abinav

3. Dhanraj J

4. Padmavathi D .. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records in respect of the order dated 02.11.2022 passed in Crl.M.P.No.768 of 2022 on the file of the Chief Judicial Magistrate, Salem and quash the same and direct the Chief Judicial Magistrate, Salem to pass appropriate orders in the Application filed by the petitioner under Section 14 of the SARFAESI Act in Crl.M.P.No.768 of 2022 in accordance with law.

For the Petitioner : Mr.K.S.Viswanathan

ORDER
(Made by the Hon'ble Acting Chief Justice)

This petition has been filed by the Bank assailing the order of the Chief Judicial Magistrate, Salem dated 02.11.2022, wherein, the prayer of the Bank for assistance to take physical possession of the petition scheduled property under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was rejected.

2. The first respondent availed financial assistance from the petitioner Bank to the tune of Rs.60.00 lakh on 01.09.2020, Rs.1.20 crore on 13.06.2018, Rs.1.20 crore on 11.02.2019, Rs.56.00 lakh on

30.06.2020, Rs.28.00 lakh on 11.11.2021, totalling to Rs.3.84 crore. The second respondent is the Proprietor and Mortgagor. The third and fourth respondents are Guarantors and Mortgagors. While availing loan, the respondents have executed necessary loan documents and security agreements and thus, created security interest in respect of that immovable properties.

3. It appears that the first respondent defaulted in repayment of credit facilities. Therefore, their account was notified as Non Performing Asset on 08.03.2022. Thereafter, notice under Section 13(2) of the Act was issued on 25.04.2022. However, the respondents have not chosen to settle the dues. Hence, possession notice under Section 13(4) of the Act was issued and symbolic possession of the property was taken by the Bank on 02.07.2022. However, physical possession could not be taken by the petitioner Bank. Hence, the petitioner filed an application under Section 14 of the Act before the Chief Judicial Magistrate, Salem.

4. The Chief Judicial Magistrate, Salem, finding that security interest cannot be created on the immovable property as per Section

31(i) of the Act of 2002, as the immovable properties are agricultural lands, refused to allow the petition filed by the petitioner Bank. Hence, the petitioner Bank is before this Court.

5. Learned counsel appearing for the petitioner Bank submitted that when the Bank has produced all the documents submitted by the respondents while availing credit facilities, including title deeds and encumbrance certificate, which were marked as Exs.P15 to P20 and P32, the Chief Judicial Magistrate, Salem ought not to have taken into consideration the nature of the land by referring to Section 31(i) of the Act of 2002.

6. Learned counsel further submitted that when an application under Section 14 of the Act of 2002 is taken out seeking assistance for taking physical possession of the property, the Chief Judicial Magistrate, Salem ought to have passed an order to take physical possession of the property and cannot examine the title deeds and the nature of the immovable properties mortgaged.

7. In support of his contention, learned counsel for the

petitioner relied upon a decision of the Apex Court in ***R.D.Jain and Co. v. Capital First Ltd. [2022 SCC Online SC 921]***, wherein it is held that the steps to be taken by the Chief Metropolitan Magistrate under Section 14 of the Act of 2002 are ministerial in nature and does not involve any adjudicatory process.

8. Before proceeding further, it is apposite to refer to Sections 14 and 31(i) of the Act of 2022. Thus, they are extracted as under:

Section 14:

> ***"Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.***— *(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief*

Metropolitan Magistrate or as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised 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 or 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."

Section 31(i):

"Provisions of this Act not to apply in certain cases*.— The provisions of this Act shall not apply to—*

...

(i) any security interest created in agricultural land;

... "

9. A perusal of Section 14 of the Act makes it clear that where the possession of any secured asset is required to be taken by the secured creditor, for the purpose of taking possession, the secured creditor has to make a request in writing to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such

secured asset may be situated. As per the Clause (ix) of the Proviso to Section 14(1), the application filed by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that the provisions of this Act and the Rules made thereunder had been complied with.

10. A cursory perusal of Section 31(i) of the Act cited above would make it clear that the provisions of this Act shall not apply to any security interest created in agricultural land.

11. In the light of the above, when an application is taken out by the secured creditor under Section 14 of the Act, it is incumbent upon the Chief Judicial Magistrate to see whether the application is accompanied with declaration that the provisions of the Act and Rules made thereunder had been complied with. Thus, the Chief Judicial Magistrate, while going through the title deeds (Exs.P15 to P20) and encumbrance certificate (Ex.P32), found that the secured assets are agricultural lands and therefore, as per Section 31(i) of the Act, security interest cannot be created and consequently, physical possession of the secured asset cannot be given to the petitioner

Bank.

12. Though learned counsel for the petitioner Bank contended that the secured assets are not agricultural lands and therefore, security interest can be created on it, the Bank has not produced any document before the Chief Judicial Magistrate disputing the nature of the land nor made any averment in the affidavit filed before this Court stating that the secured assets are not agricultural lands.

13. Further, the contention of learned counsel for the petitioner Bank that the Chief Judicial Magistrate has to perform only ministerial function when an application is taken out under Section 14 of the Act and not judicial function is not sustainable, as, even while performing ministerial function, the Chief Judicial Magistrate is expected to apply his judicial mind. In the instant case, the Chief Judicial Magistrate, Salem has not only exercised ministerial act, but also applied his judicial mind, which requires no interference by this Court.

14. In view of the discussions aforesaid, we do not find any merit in this writ petition and accordingly, it is dismissed.

(T.R., ACJ.) (D.B.C., J.)
14.12.2022

Index : Yes/No

kpl

T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J

(kpl)

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