BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.07.2022
CORAM
THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.14839 of 2022

State Bank of India,
Represented by its Chief Manager &
Authorised Officer, Mr.C.Praveen,
Stressed Assets Recovery (SARB) Branch,
No.8, Dr.Ambedkar Road,
Madurai - 625 020. ... Petitioner

Vs.

The Learned Chief Judicial Magistrate,
Nagercoil, Kanyakumari District. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records related to the impugned Docket order passed by the respondent, learned Chief Judicial Magistrate, Nagercoil, Kanyakumari District, dated 09.05.2022, 19.05.2022 and 20.06.2022 in Crl.M.P.No.Filing No.5255 of 2022 in CNR.No.TNKK020052552022 and quash the same and consequently direct the learned Chief Judicial Magistrate, Nagercoil, Kanyakumari District to take on file Crl.M.P.Filing No.5255 of 2022 in CNR.No.TNKK020052552022 and pass final orders within a time frame to be determined by this Court.

For Petitioner : Mr.N.Dilip Kumar

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Heard Mr.N.Dilip Kumar, learned counsel for the petitioner.

2. This Writ petition is filed challenging the docket endorsement made by the learned Chief Judicial Magistrate, Nagercoil, Kanyakumari District, while returning the application filed by the petitioner bank under Section 14 of the SARFAESI Act (hereinafter referred to as 'the Act'. The reasons for the return as found in the docket endorsement reads as follows:

"1.The loan application and sanction letter of all loan not filed.

2.The date of loan sanctioned by the petitioner to the respondent is not mentioned in the affidavit.

3.Schedule of property Original deed documents not filed (398/2014).

4.MOD of Title deed ND 1998/2016 dated 12.08.2016 757/2016 dated 29.03.2016 735/2016 dated 24.03.2016 are not filed and details of full loan amount MOD of Deposit of Title deed not mentioned in the affidavit.

5.Postal receipt of demand notice sent to the respondent by the petitioner names of respondent not mentioned in the receipt reasons not stated.

Hence returned.

Time one month."

3. The learned Chief Judicial Magistrate failed to see that he is doing only a ministerial act and he is not an authority to adjudicate any right between the bank and the private individual in the application filed under Section 14 of the Act. Assuming that a notice is necessary and the learned Chief Judicial Magistrate has to hear the respondent, the reasons stated in the docket order for returning the application are unsustainable. It is open to the learned Chief Judicial Magistrate to number any application once the bank satisfies the requirement of Section 14 of the Act even by filing an affidavit.

4. Section 14 of the Act is extracted for the convenience:

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:*

1[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 assets1[within a period of thirty days from the date of application]:

1[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.]

2[(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 Magistrate1[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.

5. From the reading of Section 14 of the Act, it is seen that the secured creditor can file an application accompanied by an affidavit duly affirmed by an Authorised Officer of the secured creditor declaring the total claim and other particulars that are enumerated under the first proviso to Section 14(1) of the Act.

6. Our view is also supported by the decision of the Division Bench of this Court in the case of ***Karvy Financial Services Ltd., vs. District Magistrate and District Collector and Others*** reported in ***(2021) 3 CTC 383***, wherein the Honourable Division Bench has held as follows:

"7. *It is not necessary to go beyond such stage for the purpose of the present proceedings since the operation of Section 14 of the Act comes at such stage where the secured creditor requires executive assistance for the purpose of obtaining possession of the secured asset or documents pertaining thereto. Section 14 of the Act permits certain classes of officials to receive a request under*

Section 14 of the Act. The extent of the assistance that may be sought would pertain to obtaining possession of any immovable property or possession of or access to certain documents. The authority approached under Section 14 of the Act has only to look into the documents filed by the relevant secured creditor in support of the request. One of such documents ought to be the various declarations as required to be furnished under Section 14 of the Act. Once the authority notices the relevant declarations to have been furnished, such authority has to accept the same at face value and not question the same or seek to adjudicate thereupon.

8. It is of great importance to appreciate that notwithstanding a request being carried to a Chief Judicial Magistrate or to a District Collector, who otherwise may enjoy adjudicatory functions, a request under Section 14 of the Act is for pure administrative assistance and the exercise undertaken by the authority approached thereunder is not adjudicatory at all. Since the entire purpose of the Act of 2002 is to unclog the dues of banks and financial institutions, most of which are state-owned bodies, time is of the essence as indicated in the provisions of the relevant statute. Thus, an authority under Section 14 of the Act is given a time-frame within which the requisite assistance has to be rendered in accordance with law."

7. In the present case, this Court is convinced that the affidavit filed by the Authorised Officer of the bank, contained the particulars required under Section 14(1) of the Act.

8. In the result, this writ petition is allowed and the learned Chief Judicial Magistrate, Nagercoil, Kanyakumari District, is directed to number the petition filed by the petitioner bank in Crl.M.P.No.Filing No.5255 of 2022 and pass appropriate orders on merits after hearing the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

pm

Note: Registry is directed to return the original papers to the learned counsel for the petitioner after retaining a photocopy of the same.

To:

The Learned Chief Judicial Magistrate,
Nagercoil,
Kanyakumari District.

Copy to: The Section Officer, E.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate
(SR-31291[F] dated 12/07/2022)

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SP/20/07/2022/6P/4C