IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219 CWP-2019 of 2021 (O&M)
Date of decision: 28.04.2022

Bank of India

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Rajiv Joshi, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Arun Sharma, Advocate for respondent No.4.

Mr. Mayur Kanwar, Advocate for respondent No.10.

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

CM-1725 and 1727-CWP-2022

In these two applications, the applicant contends that she is not a necessary party, since the relief claimed in the writ petition is not directed against her.

This fact is not disputed by counsel for Bank of India-the writ petitioner. Therefore, these two applications are allowed.

CWP-2019-2021

In this writ petition, the writ petitioner is assailing order dt. 19.08.2019 and order dt. 20.02.2020 passed by respondent No.2 declining to grant relief to the applicant under Section 14 of the SARFAESI Act, 2002 (for short 'the Act') to take possession of the property of respondent No.4 of which respondents No.5, 6, 8, and 9 are partners and respondents No.7, 10 and 11 are guarantors.

Initially, when the writ petitioner-Bank filed application under Section 13 (4) of the Act, it was rejected on the ground that the affidavit was verified on 29.05.2019, but it bears the stamp of 31.05.2019, and also on the ground that notice under Section 13(4) of the Act was not issued to the borrowers/guarantors.

Rectifying the defect in so far as the affidavit is concerned, a fresh application under Section 14 of the Act was moved by the writ petitioner before respondent No.2.

However, the same was also rejected on the ground that the provisions of Section 13(4) of the Act regarding service of notice under Rule 8(1) was not complied with by placing reliance on an order passed by DRT-III, Chandigarh on 11.01.2018 in SA-374-2017.

Counsel for the writ petitioner contends that the Supreme Court of India in **Standard Chartered Bank Vs. V. Noble Kumar & Ors., 2013 (9) SCC 620**, had held that a creditor can approach the Magistrate under Section 14 of the said Act directly even without issuing a notice under Rule 8(1), and without facing a situation where he met any resistance. In the said judgment, the Supreme Court held as under:-

> *"28. It is in the above-mentioned background of the legal frame of Sections 13 and 14, we are required to examine the correctness of the conclusions recorded by the High Court. Having regard to the scheme of Sections 13 and 14 and the object of the*

enactment, we do not see any warrant to record the conclusion that it is only after making an unsuccessful attempt to take possession of the secured asset, a secured creditor can approach the Magistrate. No doubt that a secured creditor may initially resort to the procedure under Section 13(4) and on facing resistance, he may still approach the Magistrate under Section 14. But, <u>it is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14</u>. The submission that such a construction would deprive the borrower of a remedy under Section 17 is rooted in a misconception of the scope of Section 17.

36. Thus, there will be three methods for the secured creditor to take possession of the secured assets:

(i) The first method would be where the secured creditor gives the requisite notice under Rule 8(1) and where he does not meet with any resistance. In that case, the authorised officer will proceed to take steps as stipulated under Rule 8(2) onwards to take possession and thereafter for sale of the secured assets to realise the amounts that are claimed by the secured creditor.

(ii) The second situation will arise where the secured creditor meets with resistance from the borrower after the notice under Rule 8(1) is given. In that case he will take recourse to the mechanism provided under Section 14 of the Act viz. Making application to the Magistrate. The Magistrate will scrutinise the application as provided in Section 14, and then if satisfied, appoint an officer subordinate to him as provided under Section 14

> *(1) (A) to take possession of the assets and documents. For that purpose the Magistrate may authorise the officer concerned to use such force as may be necessary. After the possession is taken the assets and documents will be forwarded to the secured creditor.*
>
> *(iii) The third situation will be one <u>where the secured creditor approaches the Magistrate concerned directly under Section 14 of the Act.</u> The Magistrate will thereafter scrutinise the application as provided in Section 14, and then if satisfied, authorise a subordinate officer to take possession of the assets and documents and forward them to the secured creditor as under clause (ii) above.*
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> *37. In any of the three situations, after the possession is handed over to the secured creditor, the subsequent specified provisions of Rule 8 concerning the preservation, valuation and sale of the secured assets, and other subsequent rules from the Security Interest (Enforcement) rules,2002, shall apply." (emphasis supplied.)*

Thus it is permissible for a secured creditor to directly approach the District Magistrate without complying with procedure under Rule 8(1) of the rules framed under the Act.

This legal position is not disputed by counsel for the respondents.

Though, counsel for respondent No.4 sought to contend that the second application under Section 14 of the Act cannot be maintained by the writ petitioner. We do not agree with the said contention for the reason that if the first application was filed defectively, the party cannot be totally deprived of the remedy under Section 14 of the Act, since all procedure is in aid of substantive justice.

In this view of the matter, the writ petition is allowed; the order dt. 20.02.2020 passed by respondent No.2 is set aside, and respondent No.2 is directed to restore the said application, and pass fresh order in accordance with law declared by the Supreme Court in above ratio within a period of three weeks from the date of receipt of certified copy of this order.

Pending CM(s), if any, stands disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(H.S. MADAAN)
JUDGE

28.04.2022
sumit.k

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No