

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-31871-2019

Reserved on: 28.02.2022

Date of Decision: 11.03.2022

Shriram Housing Finance Limited

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

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

Present: - Mr. Harsh Chopra, Advocate for the petitioner

Mr.S.S. Pannu, DAG, Haryana.

Mr.Ishaan Ksheterpal, Advocate, for respondents No.4 & 5.

M.S. RAMACHANDRA RAO, J.

In this Writ petition the petitioner has challenged order dt. 24.05.2018 (P7) passed by the District Magistrate, Kaithal (Respondent No.2).

The Back Ground Facts

The Writ petitioner is a financial institution.

Respondent No.5, his deceased mother, namely, Saroj Rani and family members had availed loan against property for an amount of ` 28,39,988/- vide loan agreement dt. 28.5.2016.

To secure the said loan, the above referred borrowers had created security interest over their residential property and some agriculture land by way of equitable mortgage of deposit of title deeds in favour of the petitioner.

On account of default by the borrowers, their loan account was declared as Non Performing Asset (NPA) by the petitioner on 08.05.2017.

Thereafter a demand notice dt. 24.07.2017 (P2) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act'] was issued through speed post to respondent No.5 and his late mother (during her lifetime), demanding total outstanding of ₹31,48,379/-, which was outstanding and demanded a payment of the same within 60 days of the demand notice.

But the borrowers did not discharge their liability and symbolic possession of the Secured Assets was taken on 02.12.2017 by issuance of notice (P4) under Section 13(4) of the SARFAESI Act.

Actual possession could not be taken by the authorized officer of the petitioner and so the petitioner filed an application under Section 14 of SARFAESI Act before the District Magistrate, Kaithal (respondent No.2) on 12.02.2018 for seeking assistance in taking the possession of the said Secured Asset.

The said application was allowed by respondent No.2 on 02.05.2018 (P5) and respondent No.2 appointed the Sub Tehsildar (respondent No.3) to take possession of the Secured Asset with the assistance of the concerned police and to forward it to the petitioner.

In the meantime, on 17.3.2018, the mother of respondent No.5 Saroj Rani passed away but, this fact was not within the knowledge of the petitioner, and so it could not bring it to the notice of respondents No.2 & 3 before passing of the order dt.02.05.2018 (P5).

According to the petitioner, it came to know about the death of the co-borrower Saroj Rani only when the respondents filed their reply on 27.08.2018 to CWP-16875-2018, filed by the petitioner earlier.

The petitioner contends that it also came to know from the filing of the said reply in that Writ petition that respondent No.2 had passed a subsequent order dt.24.05.2018 (Annexure P7) asking respondent No.3 to return the original order dt.02.05.2018 (P5) passed by respondent No.2 and thus, the proceedings initiated under Section 14 of SARFAESI Act came to be halted.

Counsel for the petitioner contended that there is no provision under the Act to review or to recall an order passed by the District Magistrate because such a power has not been conferred under the SARFAESI Act. He also placed reliance on the order passed by the Gujarat High Court in ***Prime Cooperative Bank Limited Vs. District Magistrate/Chief Metropolitan Magistrate***¹ wherein, the Gujarat High Court held that after passing of an order under Section 14 of SARFAESI Act, the District Magistrate becomes *functus officio* and he cannot reopen a concluded issue. It is, therefore, contended by petitioner that respondent No.2 could not have recalled his order dt. 02.05.2018/07.05.2018 (P5) vide its order dt.24.05.2018 (P-7).

Written statement of respondents No.1 to 3

In the written statement filed on behalf of respondents No.1 to 3, it is contended that the warrant *dakhal* was called back in view of the application filed by Sukhbir Singh, husband of the borrower Saroj Rani intimating to the District Magistrate, Kaithal that Saroj Rani had died and it was felt that it is not appropriate to pass a warrant against a dead person. It is stated that a letter dt. 25.05.2018 (R2) was addressed to the petitioner asking it to submit list of legal

heirs of Saroj Rani against whom warrant of possession may be issued, but the petitioner did not furnish such a list and filed the instant Writ Petition.

A plea is also raised that there is no violation of the provisions of the Statute by respondent No.2 and he had not passed any fresh order but had only recalled the warrant *dakhal* for the aforesaid reason of the death of Saroj Rani after the application under Section 14 of SARFAESI Act was filed on 12.02.2018 (P4), and before passing of the initial order by respondent No.2 on 02.05.2018.

Mr.S.S. Pannu, DAG, Punjab reiterated the aforesaid submissions.

The stand taken by respondents No.4 & 5

The legal heirs of respondent No.4 and respondents No.5 (co-borrower) supported the stand of respondents No.1 to 3.

It is also contended that the mortgage property was only in the name of deceased Saroj Rani but the petitioner had got signatures of Saroj Rani, her husband Sukhbir Singh, son Paramjeet Singh (respondent No.5) and Sudha Rani daughter, as borrowers in the loan agreement, and that this was cleverly done by the petitioner so that if the owner of the property dies, the petitioner would still have the remedy to take possession of the mortgaged property under the SARFAESI Act from the legal representatives.

Mr.Ishan Ksheterpal, counsel for respondents No.4 & 5 reiterated the said submissions.

The consideration by the Court

In the light of the above submissions of the respective parties, the following points arise for consideration:

- (i) *Whether a District Magistrate, after passing an order under Section 14 of the SARFAESI Act, can stop the enforcement of the order by a subsequent order/direction for whatever reason?*
- (ii) *Whether, in the facts and circumstances, the absence of husband and daughter of the deceased borrower Saroj Rani as parties in the application under Section 14 of the SARFAESI Act would justify the non-enforcement of the said order?*

Point (a):

The SARFAESI Act, 2002 was enacted to provide machinery for enabling banks and financial institutions to take possession of the secured assets of borrowers/guarantors and to sell them speedily in the event of a default by the borrowers in their payment obligations.

Section 14 of the SARFAESI Act is a provision enacted in the Act to enable banks and financial to take possession of the Secured Asset.

In *Asset Reconstruction Company (India) Limited Vs. State of Haryana* in **CWP-16366-2016** decided on 18.8.2017, a Division Bench of this Court considered the question “*whether the District Magistrate is competent to ‘review’ his own order or the one passed by his predecessor under Section 14 of the SARFAESI Act?*”.

It held as under:

“(27) The powers exercisable by a District Magistrate under Section 14 are creation of a Statute. Those powers are required to be exercised within the four corners of the said provision. In the case in hand, the then District Magistrate, Sonapat rightly exercised such power and passed the order dated 08.02.2016 thereby directing his subordinate officer, namely, Naib Tehsildar-cum-Executive Magistrate to take possession of the secured assets and hand over the same to ARCIL. It could not be disputed by the learned State counsel or senior counsel for the borrowers that there is no provision under the SARFAESI Act under

which the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, can review, recall or modify his order. The successor District Magistrate, therefore, had no jurisdiction whatsoever either to entertain the borrower's application dated 12.06.2016 or to pass the impugned orders dated 14.06.2016 and 24.10.2016. These orders are totally without jurisdiction and void ab initio, for it is well settled that the power to review is not an inherent power and it must always be conferred by law either expressly or by necessary implication. The so-called reasons assigned by the successor District Magistrate, even if assumed to be correct, did not and cannot clothe him with a non-existent power to review the order passed by him or his predecessor. [Ref. (i) Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji Arjunsinghji (1971) 3 SCC 844; (ii) Kewal Chand Mimani (D) By Lrs. Vs. S.K. Sen & Ors. (2001) 6 SCC 512]."

(28) It would be apt to cite a Division Bench decision of Allahabad High Court in **Writ-C No.30899 of 2016 (Kotak Mahindra Bank Ltd. vs. State of UP & 4 others)** decided on 21.10.2016, where an identical question came up for consideration and the High Court viewed as follows:-

"Be that it may, we are of the considered opinion that the District **Magistrate** has absolutely no jurisdiction to review his order dated 24.06.2013 passed under the Act, 2002 specifically when the order was subjected to challenge before the Debt Recovery Tribunal and such application was dismissed by a reasoned order holding therein that the borrower had not approached the Tribunal with clean hands. If they were not satisfied they had the remedy of approaching the Appellate Tribunal under Section 18 of the Act, 2002. We are, therefore, more than satisfied that such order of the District Magistrate cannot be permitted to stand on record. The order of the District Magistrate dated 27.04.2016 and dated 30.06.2016 are hereby quashed."

We are respectfully in agreement with the view taken by the Allahabad High Court. Consequently, it is held that the District Magistrate, Sonapat had no authority or power to review the order dated 08.02.2016 and his subsequent orders being without any authority of law, cannot sustain." (**emphasis supplied**)

This was reiterated by another Division Bench of this Court in CWP-4892-2019 titled as *“Indiabulls Housing Finance Ltd. Vs. State of Haryana and others”*, decided on 15.10.2019.

In view of the above, Point (a) is answered accordingly holding that a District Magistrate, after passing an order under Sec.14 of the SARFAESI Act,2002 has no jurisdiction to review or recall such order.

Point (b):

We shall next consider the question:

“(b) Whether, in the facts and circumstances, the absence of husband and daughter of the deceased borrower Saroj Rani as parties in the application under Section 14 of the SARFAESI Act would justify the non-enforcement of the said order?”

In the instant case admittedly, late Saroj Rani, her son i.e. Paramjeet Singh (respondent No.5), Sukhbir Singh, husband of Saroj Rani and also Sudha Rani daughter of Saroj Rani have signed the loan agreement dt. 28.05.2016 (R4/2) with the petitioner.

The property is admittedly in the name of only Late Saroj Rani, who passed away on 17.03.2018 after filing of application under Section 14 of SARFAESI Act on 12.2.2018 (P4) by the petitioner and before 02.05.2018 when respondent No.2 passed the order under Section 14 of the SARFAESI Act.

On her death, under Section 15 of the Hindu Succession Act,1956, her children would succeed to her property.

In the application made under Section 14 of the SARFAESI Act before District Magistrate, Kaithal (respondent No.2), the petitioner had sought

possession of the Secured Assets from both late Saroj Rani and her son Paramjeet Singh, and the respondent no.2 had allowed the same on 02.05.2018.

Even if Saroj Rani had died prior to the passing of the order, in our considered opinion there could not be any abatement of the proceeding when her estate is represented by her son Paramjeet Singh (respondent No.5), who is one of the legal heirs.

In **Mohammed Hussain (Dead) by LRs and Others v. Occhavlal and others**², the question whether there would be abatement of a suit if all legal heirs of a deceased party are not impleaded, was considered by the Supreme Court.

In that case, the Madhya Pradesh High Court in a Second appeal had set aside the concurring judgments of the Courts below decreeing a suit for redemption of mortgage filed by the appellants against the respondents on the ground that the suit for redemption could not be held to be maintainable in law in the absence of two married daughters of one of the mortgagees, who had died.

When this judgment was challenged in the Supreme Court, by relying upon its judgment in **N.K. Mohd. Sulaiman Sahib Vs. N.C. Mohd. Ismail Saheb and others**³, the Supreme Court held that ordinarily a Court does not regard a decree binding upon a person, who was not impleaded in the action but, one of the important exceptions to the said Rule is that *where by the personal law governing the absent heir, the heir impleaded represents his interest in the estate of the deceased, the decree would be binding on all the persons interested in the estate; if there be a debt justly due and no prejudice is*

² 2008(3) SCC 233

shown to the absent heir, the decree in an action where the plaintiff has after bona fide enquiry impleaded all the heirs known to him will ordinarily be held binding upon all persons interested in the estate; the Court will also investigate, if invited, whether the decree was obtained by fraud, collusion or other means intended to overreach the Court. Therefore, in the absence of fraud, collusion or other similar grounds, which taint the decree, a decree passed against the heirs impleaded binds the estate, even though the other persons interested in the estate are not brought on record.

Applying the said principle, the Supreme Court held that the decision of the High Court was erroneous since two sons had sufficiently and in *bona fide* manner represented the estate of the deceased and so the suit for redemption of mortgage cannot be dismissed on the ground that the two married daughters were not on record..

Similar view was also taken by the Supreme Court in ***Ramdass and another Vs. Dy. Director of Consolidation and others***⁴. In that case, it was held that when two of the legal representatives of the deceased were already on record, failure to bring the 3rd legal representative on record would not result in the abatement of appeal.

No doubt proceeding under Section 14 of the SARFAESI Act is not akin to a suit since no adjudication is permitted by the District Magistrate but, the principle laid down in the aforesaid decisions would equally apply by way of analogy, and on the sole ground that the husband and other legal heirs of the deceased Saroj Rani were not on record, the process of execution of the

order passed under Section 14 of the SARFAESI Act could not have been stopped by respondent No.2.

This is because respondent No.5 was already on record in the said proceedings and he represented the estate of the deceased; and the order against him would be binding on all the other heirs or persons interested in the estate of the deceased.

Point (b) is answered accordingly.

Therefore, the Writ Petition is allowed; order dt. 24.5.2018 issued by respondent No.2 to the respondent No.3 is set aside; and respondents No.1 to 3 are directed to implement the order dt.02.5.2018 passed by respondent No.2 within four weeks from the date of receipt of certified copy of this order. No costs.

(M.S. Ramachandra Rao)
Judge

11.03.2022
Vivek

(H.S. Madaan)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes