AD-13
Ct No.09
27.07.2023
TN

WPA No. 16995 of 2023

AMP Agrotech Private Limited and others
Vs.
The District Magistrate, North 24 Parganas and others

Mr. Siddhartha Banerjee,
Ms. Tannistha Bandyopadhyay,
Ms. Jyoti Rauth,
Mr. Anjan Bhandari

.... for the petitioners

Mr. Bishwambher Jha

.... for the respondent
nos. 4 and 5

Learned counsel for the petitioners contends that the initial order under Section 14 of the SARFAESI Act, 2002 (hereinafter referred to as "the 2002 Act") passed against the petitioner was bad in law, amounting to a nullity, in view of non-compliance of the nine-point requirement stipulated in the proviso to Section 14(1) of the 2002 Act.

That apart, after waiting for so many years, only recently the bank has applied before the Magistrate, indicating that the appointment of an Executive Magistrate is required for the purpose of executing the order of the District Magistrate under Section 14 of the SARFAESI Act, 2002, passed in the year 2016. Learned counsel places reliance on the document annexed at pages-75 and 76 of the writ petition, where a request was made by the bank to the District Magistrate, North 24 Parganas, *inter alia* stating that the bank has been verbally informed by the police authorities that the order of the District Magistrate cannot be executed without appointment of Executive Magistrate and, despite the repeated requests of the bank, the bank was yet to receive any date for physical possession of the said property in execution of the aforesaid order.

Learned counsel for the petitioner further contends that in the event any order of appointment of the Executive Magistrate is passed, the petitioner is entitled to get a copy of such order, for the petitioner to challenge the same before the tribunal. Although a coordinate Bench of this court, vide order dated September 13, 2022 passed in a previous writ petition, had granted liberty to the petitioner to approach the tribunal, the said approach is not possible, it is submitted, unless a copy of the order of appointment of the Executive Magistrate is handed over to the petitioner.

That apart, the requirements of Section 14 of the 2002 Act are required to be complied with, it is argued, since the order sought by the bank, for appointment of an Executive Magistrate, is virtually an amendment of the order of the District Magistrate passed under Section 14 in the year 2016, by introducing certain additional elements thereto.

It is further submitted that the law does not permit the bank to seek a fresh order under Section 14 from the District Magistrate, since the District Magistrate has been rendered *functus officio* after passing the order of 2016.

Learned counsel also harps on the delay occasioned by the bank in making the instant application. As such, learned counsel for the petitioners seeks a protection by this court from the action of the police authorities regarding the proposed dispossession of the petitioner from the property.

Learned counsel appearing for the bank lays stress upon the order dated September 13, 2022, passed by the coordinate Bench, and submits that the petitioners have not taken advantage of such order by preferring a challenge before the tribunal. As such, the writ petition ought not to be entertained at the behest of the petitioners.

Heard learned counsel for the parties.

As regards the compliance of the nine-point requirement stipulated in the proviso to Section 14(1) of the 2002 Act, it is not the law that non-compliance of such requirement of law renders the order under Section 14 *per se* a nullity.

At best, the same would tantamount to being a flaw or legal error in the said order, which could have been challenged before an appropriate forum by the petitioners within reasonable time. However, since the said order was passed on August 29, 2016 and has not yet been challenged successfully before any legal forum till date, the same has attained finality by now.

Hence, the plea of the petitioners regarding the non-adherence of the Magistrate to the nine-point requirement, at the time of passing the original order passed under Section 14, falls flat.

Secondly, the learned Single Judge, vide order dated September 13, 2022 passed in WPA 18772 of 2022, in a writ petition filed by the present writ petitioners, clearly observed that since the statutory alternative remedies available to the petitioners are there, the petitioners were given leave to approach the Debts Recovery Tribunal for necessary redressal.

A restraint order was also passed on the bank for a limited period till September 19, 2022.

However, the said restraint order has long elapsed. There is nothing on record to indicate that the petitioners have complied with the said order or taken advantage of the same, which was passed as long back as on September 13, 2022, by preferring a challenge before the Debts Recovery Tribunal.

First, when the said order was passed, there was no occasion for the petitioners to plead the apprehension of a fresh order being passed by the Magistrate. Secondly, nothing in the application of the bank seeking appointment of an Executive Magistrate confers any pretext or alibi on the petitioners to justify the delay in not taking benefit of the order dated September 13, 2022 by moving the tribunal. Having not taken such advantage, it does not lie in the mouth of the petitioners that they are remediless.

The petitioners have deliberately avoided to prefer a challenge before the Debts Recovery Tribunal, despite the said alternative remedy having been spelt out, and liberty having been given to avail the same to the petitioners, by the coordinate Bench on September 13, 2022.

That apart, it is seen from the application of the Magistrate that the same merely seeks an implementation of the order dated August 29, 2016 passed by the Magistrate under Section 14 of the 2002 Act.

It cannot, by any stretch of imagination, be said that the said order would tantamount to a fresh order under Section 14. At best, the order, if passed on the application of the bank, would be in implementation of the order under Section 14.

Insofar as the "*functus officio"* argument is concerned, the same cannot be accepted, being legally not tenable, since the Magistrate does not lose authority or jurisdiction till possession is given under the contemplation of Section 14. Section 14(1) says that where the possession of any secured asset 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 the 2002 Act, the secured creditor may, for the purpose of "taking possession or control of any such secured asset", request in writing the Magistrate having jurisdiction, "to take possession thereof" and the Magistrate shall on such request "take possession of such asset and documents relating thereto" and forward such assets and documents to the secured creditor. In the present case, the Magistrate having not done so till date, it cannot be said that the Magistrate has been rendered *functus officio.*

Rather, the present attempt seems to be a *mala fide* ploy of the petitioner to abuse the process of court by prolonging litigation unnecessarily, thereby delaying the possession being taken over by the bank in due process of law.

In any event, the apprehension of an order being passed on the application of the bank to appoint an Executive Magistrate cannot be a valid excuse for the petitioner to come up in a premature challenge in that regard.

Having regard to the above circumstances, the petitioners have not made out any valid cause for interference in the present writ petition.

It is made clear that due to *mala fide* action on the part of the petitioners, costs would otherwise have been imposed on the petitioners, unless the respondent-bank had failed to furnish any proper explanation for the extreme delay caused by the bank regarding taking possession of the property-in-question. The negligence and sloth on the part of both the parties cancel out each other, and does not justify any costs being imposed on the petitioners.

However, there is no merit in the writ petition.

Accordingly, WPA No. 16995 of 2023 is dismissed on contest, without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)