

29.08.2023
Sl. No.12(DL)
srm

C.O. No. 3659 of 2022
Kotak Mahindra Bank Ltd.
Versus
Moongipa Roadways & Ors.

Ms. Somi Ojha,
Ms. Sonia Nandy

...for the Petitioner.

Mr. Vikas Baisya,
Mr. Sourojit Dasgupta,
Mr. A. Chatterjee

...for the Opposite Parties.

Affidavit-in-opposition and reply are taken on record.

The revisional application arises out of an order dated November 9, 2022 passed by the District Magistrate, Howrah, under Section 14 of the SARFAESI Act. According to the District Magistrate, as the deeds which were submitted along with the application under Section 14 of the SARFAESI Act indicated that RS Dag No.633 corresponding to LR Dag No.992, RS Dag No.640 corresponding to LR Dag No.999 and LR Dag Nos.686, 687 and 688, were *sali* lands, the bank could not take recourse to the said section, for taking over possession of the agricultural lands.

On the point of maintainability raised the opposite parties, the Hon'ble Apex Court in the matter of *Harshad*

Govardhan Sondagar vs International Assets Reconstruction

Co. Ltd. & Ors. reported in (2014) 6 SCC 1 was of the view that an application under Article 227 of the Constitution of India could be entertained from an order passed by the District Magistrate under Section 14 of the SARFAESI Act as a purposive and contextual construction should be given to the said section. The relevant paragraph is quoted below:-

22. Sub- section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in *Columbia Sportswear Company v. Director of Income Tax, Bangalore* [(2012) 11 SCC 224]:

"17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the Legislature making the decision of the tribunal final or conclusive, we hold that sub-section (1) of Section 245S of the Act, insofar as, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and on the Commissioner and income- tax authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or

the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the Authority."

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law.

The revisional application is entertained only on the ground that the District Magistrate did not take into consideration the relevant documents with regard to the sanction of loan and the notices issued to the borrower. Such documents would demonstrate the description of the property, which were mentioned as godowns.

Learned Advocate for the bank submits that the Hon'ble Apex Court had held in the decision of ITC Limited vs. Blue Coast Hotels Limited & Ors. reported in (2018) 15 SCC 99 that if the parties proceeded as if the lands were not agricultural lands, in that event, the bar under the SARFAESI Act permitting the bank from proceeding against agricultural land would not be applicable. The Hon'ble Apex Court held that the court should proceed on a case to case basis, to ascertain the actual facts. The relevant paragraphs are quoted below:-

"37. In the present case, security interest was created in respect of several parcels of land, which were meant to be

a part of single unit i.e. the five-star hotel in Goa. Some parcels of land now claimed as agricultural land were apparently purchased by the debtor from agriculturists and are entered as agricultural lands in the revenue records. The debtor applied to the Revenue Authorities for the conversion of these lands to non-agricultural lands which is pending till date due to policy decision.

38. It is undisputed that these lands were mortgaged in favour of the creditor under a deed dated 26-2-2010. Obviously, since no security interest can be created in respect of agricultural lands and yet it was so created, goes to show that the parties did not treat the land as agricultural land and that the debtor offered the land as security on this basis. The undisputed position is that the total land on which the Goa Hotel was located admeasures 182225 sq m. Of these, 2335 sq m are used for growing vegetables, fruits, shrubs and trees for captive consumption of the hotel. There is no substantial evidence about the growing of vegetables but what seems to be on the land are some trees bearing curry leaves and coconut. This amounts to about 12.8% of the total area."

The learned Advocate for the bank has referred to the sanction order and the notice under Section 13(2) of the SARFAESI Act, in order to demonstrate that both the parties treated the lands as non-agricultural land and godowns had been constructed on the said land.

In such view of the matter, this Court invokes the general power of superintendence and sets aside the order impugned. Non consideration of relevant laws and materials on record in the ground for setting aside of the order. The matter is remanded to the District Magistrate, Howrah, for a

fresh decision, upon allowing the bank to rely on the relevant documents and the judgment of the Hon'ble Supreme Court.

It is made clear that the borrower will always be at liberty to challenge the order of the District Magistrate before the appropriate forum, if any decision is taken adverse to the interest of the borrower, on merits of the application under Section 14 of the SARFAESI Act.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)