

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(228)

**CWP-26368-2018
Decided on : 01.02.2023**

The Jammu & Kashmir Bank Ltd.

.....Petitioner(s)

Versus

State of Punjab & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- None for the petitioner.

Mr.Navneet Singh, Sr.DAG, Punjab.

Mr.V.K.Sachdeva, Advocate, for respondent No.3 to 8.

G.S. Sandhawal, J. (Oral)

Challenge in the present writ petition by the Bank, filed under Article 226/227 of the Constitution of India is to the order dated 07.05.2018 (Annexure P-7) whereby the Addl.District Magistrate, Ludhiana had deferred the proceedings under Section 14 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for short, the '2002 Act'). Directions had been issued that both the parties should get their documents regarding the property measuring 20 kanals area as it was found that it was a portion out of 29kanals 19 marlas which was owned by Om Packages, the guarantor-respondent No.8 herein and was un-partitioned and therefore till the factual position being not clear he did not pass the necessary orders under Section 14 of the 2002 Act in the application filed by the petitioner-Bank. Another reason which weighed with the District Magistrate was that there was pendency of RSA-1848-2013 titled *Prem Kumar Vs. BBF Industries Ltd.* pertaining to 1013 sq.yards of land and there was stay operating.

It has now also been brought to our notice that subsequently the said RSA has been allowed vide order dated 24.07.2018 (Annexure P-11) and the judgment and decree passed by the Lower Appellate Court was set aside which had reversed the findings of the Civil Court wherein the suit filed against the borrower for possession of the property had been decreed on 21.07.2010 (Annexure P-9). It has also been further brought to our notice that SLP(C) No(s).32895/2018, filed by the borrower-respondent No.3, M/s BBF Industries Ltd. has been dismissed on 18.01.2019 and thus, the civil litigation has come to an end regarding the second portion of the land for 1013 sq.yards.

It is also apparent from the record that on 23.05.2018, the Bank had also, in compliance of the order dated 07.05.2018 which is now impugned, clarified the position and only reiterated the fact that 20 kanals 5 marlas had been mortgaged. It is also to be noticed that the Bank had highlighted that the earlier order passed by the District Magistrate was further reviewed on 06.09.2017 (Annexure P-4) and it is an admitted fact that the said order was also subject matter of challenge before the Division Bench of the Jammu & Kashmir High Court wherein directions were issued on 13.03.2018 (Annexure P-5) that if any application under Section 14 of the 2002 Act is filed, it should be accompanied by an affidavit as required in law and if affidavit is not filed, then no steps be taken till the filing of the affidavit.

In such circumstances, we are of the considered opinion that the District Magistrate was not reviewing the order in any manner as apparently, from the first order dated 06.09.2017 (Annexure P-4), it would

be clear that the same was not in conformity with the procedure prescribed and a four line order was passed that since possession of the mortgaged property was to be taken, police help shall be accepted so that there is no violation of any rules.

The necessary requirements as laid down under Section 14 of the 2002 Act regarding the satisfaction of the District Magistrate was never recorded and therefore, the Division Bench of the Jammu & Kashmir High Court had protected the borrower by directing that the necessary affidavit be filed. In such circumstances, we do not find any ground to interfere in the orders passed by the District Magistrate, Ludhiana dated 07.05.2018 (Annexure P-7) whereby fresh material has been called for.

However, keeping in view the fact that substantial period has gone by since then, it is open to the Bank to file an application before the District Magistrate, Ludhiana to proceed thereafter, from the stage where the proceedings had been paused as per the impugned order.

The present writ petition is disposed of with the above-said directions.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

01.02.2023
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Whether speaking/reasoned :	Yes
Whether Reportable :	No