D/L. 15.
February 6, 2024.
MNS.

WPA No. 23381 of 2023

Mahabuba Begum
Vs.
Union of India and others

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta

… for the petitioner.

Mr. Debashis Saha,
Ms. R. Bhattacharya

…for the respondent-Bank.

1. The *vires* of Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) has been challenged.
2. The limbs of challenge are two-fold.
3. First, no opportunity of hearing to the borrower has been incorporated in the said provision, which is a blatant violation of the principle of *audi alteram partem*, which is an integral part of natural justice.
4. Secondly, the Chief Judicial Magistrates have been empowered as the authority under Section 14 of the SARFAESI Act to "assist" the creditor or its Authorised Officer in taking possession.
5. It is argued that said designation is demeaning to judicial officers, particularly

since Section 12 of the Code of Criminal Procedure contemplates that this Court appoints Judicial Magistrates, who have judicial functions. Relegation of such judicial Officers to administrative functions to assist the creditor is, from all perspectives, improper.

6. Learned counsel for the petitioner places reliance on the judgment of *Voltas Limited Vs. Tahsildar, Thane and others* reported at *(2012) 13 Supreme Court Cases 165*, where the Supreme Court observed that it is settled law that no penal order can be passed without giving any notice and hearing to the affected person.

7. It is argued that in consonance with the said ratio, Section 14 ought to have an in-built structure whereby an opportunity of hearing is to be given to the borrower.

8. Having not been so provided, the *vires* of the said Section itself is suspect, the provision being unconstitutional.

9. Learned counsel appearing for the respondent-bank controverts the contentions of the petitioner.

10. Learned counsel places reliance on a co-ordinate Bench judgment of this Court in *Jawahar Singh Vs. United Bank of India and others* reported at *AIR 2015 Calcutta 306*. In

the said judgment, the learned Single Judge had at length considered a similar objection to the constitutionality of Section 14, regarding non-compliance of the provisions of natural justice.

11. However, the learned Single Judge refused to accept such contentions. It was observed *inter alia*, that the scheme of the SARFAESI Act as explained in *Mardia Chemicals Ltd*. reported at *AIR 2004 SC 2371* and *Transcore* reported at *AIR 2007 SC 712*, read with *V. Noble Kumar's case*, indicates that it is intended to facilitate quick recovery of secured debts without extending any opportunity of hearing to a borrower and without judicial/quasi-judicial intervention till such time possession of the secured asset is taken by the secured creditor after serving the requisite notices and responding to the objection/representation that may be lodged by the borrower under Section 13(3A).

12. The learned Single Judge had, in the said judgment, considered the validity of the said provision in details and had upheld the constitutionality of Section 14 of the SARFAESI Act.

13. Learned counsel next cites the judgement of *Mardia Chemicals Ltd. and others Vs. Union*

of India and others reported at *(2004) 4 Supreme Court Cases 311*, which was also considered by the learned Single Judge in *Jawahar Singh* (supra).

14. In *Mardia Chemicals*, the Supreme Court, *inter alia*, observed that there is always a presumption in favour of the constitutionality of a Statue, the rule being based on the assumption, judicially recognized and accepted, that the legislature understands and correctly appreciates the needs of its people. It was further observed that legislation, particularly in economic matters, is essentially empiric and is based on experimentation. There may be crudities and inequities in complicated experimental economic legislation but on that it cannot be struck down as invalid.

15. Lastly, learned counsel for the respondent-bank cites a judgement in *Indian Bank Vs. D. Visalakshmi* reported at *(2019) 20 Supreme Court Cases 47*, where the powers of the Chief Judicial Magistrate and other Magistrates, including the Chief Metropolitan Magistrate, within the contemplation of Section 14 was discussed in detail.

16. As such, it is argued that constitutionality of Section 14 has already been upheld by

several courts including the Supreme Court and this Court ought not to interfere in the present challenge.

17. The first contention taken by the petitioner is that no opportunity of hearing is given to the borrower in Section 14, which violates the principles of natural justice. However, the said principle cannot be accepted, both in deference to the judgement of *Jawahar Singh* (Supra) as well as *Mardia Chemicals* (supra) and other judgements in the same context.

18. That apart, even independent of the ratio laid down in the said judgments, a careful scrutiny of the scheme of the SARFAESI Act indicates that the same is structured in the sense that an exercise under Section 14 is preceded by enforcement of security interest as contemplated in Section 13 of the SARFAESI Act.

19. Section 13(2) contemplates a notice to the borrower, which is followed by sub-section (3) which indicates that details of the amount payable by the borrower and secured assets intended to be enforced by the secured creditor in the event of non-payment has to be elaborated in the said notice.

20. More importantly, sub-section (3A) of Section 13 gives an opportunity to the borrower to

make a representation or raise an objection. The said objection has to be considered before the secured creditor proceeds further to take measures under sub-section (4) of Section 13 of the SARFAESI Act. Thus, prior to taking measures under Section 13(4) of the SARFAESI Act itself, the borrower is given sufficient opportunity of representation/objection.

21. That apart, Section 17 gives a blanket charter on any person, including the borrower, aggrieved by any of the measures referred to in Section 13(4) to prefer a further challenge, which provides a wide forum for the borrower and other aggrieved persons to have all their points ventilated. Thus, a double layer of safety net is provided to the borrower by way of Section 13(3A) as well as Section 17 of the SARFAESI Act, the latter being much wider in scope.

22. As opposed to those provisions, Section 14 is one for implementation of the measures taken under Section 13, which is subject to scrutiny under Section 17.So no further opportunity is required to be given to the borrower.

23. Section 14 does not afford any opportunity on the authority concerned to undertake any exercise of adjudication at all. Although

quasi-judicial authorities have been so empowered, the said empowerment is to ascertain that there is at least a quasi-judicial scrutiny on the aspect of whether all the components of Section 14 are sufficiently complied with before implementation of the order. The quasi-judicial aspect of the consideration under Section 14 ends there and not further.

24. It has been held time and again that the affidavit to be filed by a creditor in connection with an application under Section 14 has to have all the components which are required by the said Section for an order under the said provision to be passed.

25. This takes us to the second component of challenge taken out by the petitioner in the present case.

26. Although the purpose of Section 14 is primarily to execute/implement the measures under the SARFAESI Act, the function of the authority entrusted with the job is not merely that of a post office, to pass on the application to the Authorised Officer or other executives, but also to scrutinize has to whether the components contemplated under Section 14 are fully complied with or not. There lies the justification of a Judicial Magistrate or District

Magistrate being entrusted with the implementation of the order.

27. On a *pari materia* footing, even in civil suits, where the right, title and interest of parties are permanently decided, the function of the executing court is, as the name suggests, to execute the decree, which is nothing but an implementation not having any judicial aspect. Only within the limited scope of Order XXI Rules 97-103 of the Code of Civil Procedure does the executing court have the charter to decide issues of title, etc. independently.

28. That apart, the purpose of an executing court under Order XXI or for that matter Section 47 of the Code of Civil Procedure is only to ascertain the implementability of a decree of the civil court and to implement the same.

29. Thus, extending the same argument as advanced in the present case, it would not then be suitable for a Civil Judge(Junior Division) or a Judge of equal standing, who is undoubtedly a judicial officer, to implement even the order of the civil court.

30. However, such modalities are adopted by the legislature to suit the purposes of different statutes according to requirement. As held by the Supreme Court time and again and particularly in the judgment cited by the

respondent-bank, it is for the legislature to decide the modalities of implementation of statutory measures.

31. There is a limit up to which a court of law can intervene with the legislative process with due deference to the separation of powers between the three wings of democracy.

32. In the present case, no palpable contravention of the Constitutional provisions or its spirit has been made out by the petitioner in Section 14 of the SARFAESI Act, in the light of the discussions above.

33. In such view of the matter, it cannot be said that Section 14 is *ultra vires*. Accordingly, the said provision is held to be *intra vires* and the challenge preferred in the writ petition fails.

34. As a result, WPA No. 23381 of 2023 is dismissed on contest.

35. There will be no order as to costs.

36. 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.)