SL-1 **26.11.2024**

**Ct. No. 08**

**Ab**

**MAT 2088 of 2024**
**IA No. CAN 1 of 2024**
**IA No. CAN 2 of 2024**

**Santosh Kumar Pandey**
***Vs.***
**Manoj Chatterjee and others.**

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**Mr. Surojit Nath Mitra, Ld. Senior Advocate,**
**Mr. Debjit Mukherjee,**
**Mr. R. K. Pandey,**
**Ms. Susmita Chatterjee,**
**Mr. Kaustav Bhattacharya,**
**Ms. Priyanka Jana.**
**... for the appellant.**

**Mr. Jaydip Kar, Ld. Senior Advocate**
**Mr. Neil Basu,**
**Mr. Rahul Gupta,**
**Ms. Jyoti Routh.**
**... for the writ petitioner/respondent no. 1.**

**Mr. Dipanjan Datta, Ld. Senior Govt. Advocate,**
**Mr. Subhajit Chowdhury.**
**... for the State.**

**Mr. Debarshi Karmakar,**
**Mr. Siddhartha Banerjee.**
**... for the respondent no. 6**

**Re: CAN 1 of 2024**

This is an application for leave to prefer an appeal against an order dated October 29, 2024 passed by the learned Single Judge in WPA 26407 of 2024.

The applicant claims to be the owner and in possession of the property, which is the subject matter of the Sale Certificate issued by the secured creditor in favour of the Blue Sky Property Ventures LLP. The writ petitioner claims to be one of the partners of the said LLP.

Considering the averments made in the application for leave to appeal and after hearing the learned Advocates for the respective parties, we are of the view that the applicant has reasons to be aggrieved against the impugned order.

Accordingly, the applicant is granted leave to move the appeal.

In view thereof, the application for leave to prefer an appeal is allowed. CAN 1 of 2024 stands disposed of.

The appellant has challenged the order by virtue of which the writ petitioner/respondent no. 1 herein was directed to approach the Asset Reconstruction Company (India) Limited, who shall assist the writ petitioner to get possession of the suit property in accordance with law and if necessary, take the assistance of the police.

Mr. Mitra, learned Senior Advocate appearing on behalf of the appellant and assisted by Mr. Debjit Mukherjee, learned Advocate, submits that the order and direction passed by the learned Single Judge is contrary to the provisions laid down under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'said Act'). Mr. Mitra further submits that the writ petitioner, who claims to be a partner of the Blue Sky Property Ventures LLP, does not have any locus standi to maintain the writ petition. Mr. Mitra also submits that an application under Section 17 of the said Act has been filed by the appellant before the Debt Recovery Tribunal and the same is pending.

Mr. Jaydip Kar, learned Senior Advocate appearing on behalf of the respondent no. 1, submits that the learned Single Judge did not grant any relief to the writ petitioner/respondent no. 1 but only directed the writ petitioner to take recourses available under the said Act. He, therefore, submits that there is no reason to interfere with the order passed by the learned Single Judge.

Mr. Siddhartha Banerjee, learned Advocate appearing on behalf of the respondent no. 6/secured creditor, submits that the secured creditor is under an obligation to take recourses available under the said Act and the secured creditor shall take necessary steps in terms of the said Act.

Mr. Dipanjan Datta, learned Advocate appearing on behalf of the State, submits that the police authorities shall act in accordance with the directions passed by this Court.

Heard the learned Advocates for the parties and perused the materials placed.

After going through the impugned order, this Court finds that the learned Single Judge while disposing of the writ petition directed the writ petitioner/respondent no. 1 herein to approach the Asset Reconstruction Company (India) Ltd., who shall assist the writ petitioner to get possession of the suit property in accordance with law and if necessary to take the assistance of the police.

Though a plea of demur has been taken by Mr. Surojit Nath Mitra, learned Senior Advocate appearing on behalf of the appellant, that the person who approached the Court by filing a writ petition has no locus standi to maintain the same proceeding, but after hearing the submissions, we do not delve to go into such technical objection and kept the said issue open.

The question would be whether the secured creditor could be directed to assist the auction purchaser to take possession of the property sold by way of auction with the assistance of police.

In order to decide as to whether the directions passed by the learned Single Judge can be sustained in law, it would be beneficial to take note of the provisions laid down under sub-section (4) of Section 13 and Section 14 of the said Act, which runs thus:

> "**13. Enforcement of security interest**.—(1) ..............
> (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover

his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

PROVIDED further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

**14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset**.—

(1) Where the possession of any secured assets 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 this Act, the secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him—

(a) take possession of such asset and documents relating thereto; and

(b) forward such asset and documents to the secured creditor:

[PROVIDED that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii)above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

PROVIDED FURTHER that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets [within a period of thirty days from the date of application]:

[PROVIDED [ALSO] that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.]

PROVIDED ALSO that the requirement of

> filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.
>
> [(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,—
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> (i) to take possession of such assets and documents relating thereto; and
>
> (ii) to forward such assets and documents to the secured creditor.]
>
> (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
>
> (3) No act of the Chief Metropolitan Magistrate or the District Magistrate 1[any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

After going through the sub-section (1) of Section 14, it is evident that where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him take possession of such asset and documents relating thereto, and forward such assets and documents to the secured creditor.

A bare reading of the said Section makes it clear that it is the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, who upon a request being made by the secured creditor has to take possession of such assets and documents relating thereto and forward such assets and documents to the secured creditor.

Therefore, the District Magistrate or the Chief Metropolitan Magistrate and not the secured creditor who can take possession of the property under Section 14(1) of the said Act.

Sub-section (2) of Section 14 states that for the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary. Therefore, sub-section (2) of Section 14 comes into play only to secure the compliance of the provision of Section 14(1).

Therefore, the question of use of force as contemplated under Section 14(2) shall arise only if the Chief Metropolitan Magistrate or the District Magistrate is of the opinion that use of force is necessary. The stage for use of force as contemplated under Section 14(2) is yet to be reached in the instant case.

In the case on hand, the writ petitioner, who claims to be the auction purchaser, has directly approached the Writ Court praying for assistance of the police to take possession of the property. The secured creditor, as observed herein before, also could not have directly approached the police authorities without taking recourse to the procedure laid down under sub-section (1) of Section 14. The question is answered in favour of the appellant.

In view thereof, this Court is of the considered view that the manner in which the order and direction has been passed by the learned Single Judge in the order dated October 29, 2024 is not in consonance with the provisions laid down under Section 14 of the said Act.

This Court is, therefore, inclined to interfere with such order in this intra court appeal. Accordingly, the impugned order dated October 29, 2024 is set aside. The appeal stands allowed. The connected application being CAN 2 of 2024 is also disposed of.

However, this order shall not preclude the authorities from taking possession in accordance with law.

For abandon precaution it is also hereby made clear that none of the observations made herein before shall have any persuasive impact on the rights of the parties, which they are claiming before the different fora, which would be decided independently on the basis of its merit.

**(Harish Tandon, J.)**

**(Hiranmay Bhattacharyya, J.)**