



W.P.No.39122 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

W.P.No.39122 of 2024
and W.M.P.Nos.42374 and 42375 of 2024

M.K.Ravi

.. Petitioner

Vs

1.Indian Bank,
rep. by its Authorised Officer cum Chief Manager,
Royapetah Branch,
Gowdia Mutt Road,
Royapetah, Chennai-600 014.

2.R.Thangaraju

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records in CrI. M.P.No.10883 of 2024 on the file of the Chief Judicial Magistrate, Thiruvallur and quash the order dated 20.11.2024 passed under Section 14 of the Securitisation of Financial Assets and Enforcement of Security Interest Act, 2002 at the instance of the first respondent in respect of the schedule mentioned property.



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For Petitioner : Mr.R.S.Raveendhren

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ORDER

(Order of the Court was made by S.S.Sundar, J.)

This writ petition is filed challenging the order of the Chief Judicial Magistrate, Tiruvallur in Crl.M.P.No.10883 of 2024, dated 20.11.2024, filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as “SARFAESI Act”].

2.1. Brief facts that are relevant for disposal of the writ petition are as follows.

2.2. The petitioner admitted that he had availed a loan of Rs.50.00 lakhs from the first respondent bank by mortgaging his property. Though it is stated by the petitioner that he had repaid substantial amount, the petitioner admitted that he committed default in payment of the monthly installments. It is not in dispute that the first respondent bank proceeded



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against the mortgaged property. After the property was brought for sale, a sale certificate was issued in favour of the auction-purchaser, the second respondent herein.

2.3. It is admitted by the petitioner that the sale certificate was also registered in favour of the second respondent on 31.10.2024. However, the first respondent, after the registration of the sale certificate, approached the Chief Judicial Magistrate, Tiruvallur by filing an application under Section 14 of the SARFAESI Act. The Chief Judicial Magistrate, Tiruvallur, has allowed the application on 20.11.2024 and appointed the advocate-commissioner with the warrant to take physical possession of the property and handover the same to the first respondent bank. It is against this order, the above writ petition is filed.

3. Learned counsel appearing for the petitioner submitted that the impugned order has been obtained by suppressing material facts and by playing fraud. Learned counsel for the petitioner also stated that the Chief Judicial Magistrate has no jurisdiction inasmuch as the property has been



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sold in favour of the auction-purchaser. He submitted that the first respondent bank cannot file application under Section 14 of the SARFAESI Act, after the transfer of title in favour of auction purchaser.

4. It is contended by learned counsel for the petitioner that once the property is sold, it cannot be termed as a secured asset so as to invoke Section 14 of the SARFAESI Act. Learned counsel further submitted that after a lapse of four years after auction sale, physical possession cannot be taken by resorting to Section 14 of the Act. Learned counsel reiterated his submission that after the registration of the sale certificate in favour of the auction-purchaser, the bank has no right, interest or control over the secured asset.

5. Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in *ITC Limited v. Blue Coast Hotels Limited and others*¹ by referring to paragraphs 43 to 46. Interestingly, learned counsel for the petitioner submitted that the Hon'ble Supreme Court has

¹ (2018) 15 SCC 99



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observed in a different case that the issue is left open.

6. The submission of learned counsel for the petitioner by relying upon the judgment in the case of *ITC Limited*, supra, has no merits. Learned counsel for the petitioner admitted that the said judgment of the Hon'ble Supreme Court is an authority on the interpretation of Section 14 of the SARFAESI Act.

7. He relied upon Paragraphs 43 to 46 of the judgment in the case of *ITC Limited*, supra, which read as follows:

“43. As noticed earlier, the creditor took over symbolic possession of the property on 20-6-2013. Thereupon, it transferred the property to the sole bidder ITC and issued a sale certificate for Rs 515,44,01,000 on 25-2-2015. On the same day i.e. 25-2-2015, the creditor applied for taking physical possession of the secured assets under Section 14 of the Act.

44. According to the debtor, since Section 14 provides that an application for taking possession may be made by a secured creditor, and the creditor having ceased to be a secured creditor after the confirmation of sale in favour of the auction-purchaser, was not entitled to maintain the application. Consequently, therefore, the



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order of the District Magistrate directing delivery of possession is a void order. This submission found favour with the High Court that held that the creditor having transferred the secured assets to the auction-purchaser ceased to be a secured creditor and could not apply for possession. The High Court held that the Act does not contemplate taking over of symbolic possession and therefore the creditor could not have transferred the secured assets to the auction-purchaser. In any case, since ITC Ltd. was the purchaser of such property, it could only take recourse to the ordinary law for recovering physical possession.

*45. We find nothing in the provisions of the Act that renders taking over of symbolic possession illegal. This is a well-known device in law. In fact, this Court has, although in a different context, held in *M.V.S. Manikayala Rao v. M. Narasimhaswam*, AIR 1966 SC 470 that the delivery of symbolic possession amounted to an interruption of adverse possession of a party and the period of limitation for the application of Article 144 of the Limitation Act would start from such date of the delivery.*

46. The question, however, whether the creditor could maintain an application of possession under Section 14 of the Act even though it had taken over only symbolic possession before the sale of the property to the auction-purchaser, depends on whether it remained a secured creditor after having done so. Section 2(1)(d) of the Act defines “secured creditor” to mean a “banking company” having the meaning assigned to it in clause (c) of Section 5 of the



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Banking Regulation Act, 1949; Section 2(1)(l) SARFAESI Act includes debts or receivables and any right or interest in the security whether full or part underlying such debt or receivables or any beneficial interest in property vide Sections 2(1)(i), (iv) and (v)- Sub-section (6) of Section 13 posits that the transfer of the secured asset by the secured creditor shall vest in the transferee all the rights as if the transfer had been made by the owner of the secured asset."

8. The Hon'ble Supreme Court has answered this issue only para 48 of the judgment which is extracted below for convenience:-

"48.In this case, the creditor did not have actual possession of the secured asset but only a constructive or symbolic possession. The transfer of the secured asset by the creditor therefore cannot be construed to be a complete transfer as contemplated by Section 8 of the Transfer of Property Act. The creditor nevertheless had a right to take actual possession of the secured assets and must therefore be held to be a secured creditor even after the limited transfer to the auction purchaser under the agreement. Thus, the entire interest in the property not having been passed on to the creditor in the first place, the creditor in turn could not pass on the entire interest to the auction purchaser and thus remained a secured creditor in the Act."

9. Therefore, paragraph No.48 of the judgment of Hon'ble Supreme Court is an answer to the submission of learned counsel for the petitioner. In para 45 of the judgment, Hon'ble Supreme Court has observed that there is nothing in the provisions of the Act that renders taking over symbolic



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possession illegal in the context of examining the view expressed by High Court to the effect that the Act does not contemplate taking over of symbolic possession and therefore, the creditor could not have transferred the secured assets to the auction-purchaser. Hon'ble Supreme Court considered the effect of transfer by auction sale under Section 13[b] of the Act and the fact that the creditor who had not handed over possession to the auction purchaser still retains the right to enjoy the usufructs and to take possession in unmistakable terms. The submission of learned counsel for the petitioner is therefore contrary to the view expressed by Hon'ble Supreme Court.

10. Section 14 of the SARFAESI Act reads as follows:

“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



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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*



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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



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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,—

- (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 or 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.”

11. When the secured asset is required to be sold or transferred by the secured creditor under the provisions of the Act, the secured creditor, for the purpose of taking possession or control of any such secured asset, can request the Chief Judicial Magistrate or the District Magistrate to take possession of the asset and hand over the same to secured creditor. When a request is made by the secured creditor, it is for the District Magistrate to



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take possession of such asset and forward such asset and documents to the secured creditor. In this case, the fact that the property has been secured is not an issue. What is “security interest” is also defined in Section 2(zf), which reads thus:

“(zf) “security interest” means right, title or interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes-

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset.”

12. The legal right of the secured creditor to enforce the security



interest is provided under Section 13 of the SARFAESI Act. Sections 13[1], 13[4] and 13[6] of the Act are relevant and hence, they are extracted below:-

“13. Enforcement of security interest.—(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

.....

(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



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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.

.....

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset."

13. The secured creditor has an indefeasible right to take possession of the secured asset of the borrower, including right to transfer by way of lease, assignment or sale for realising the secured loan. Under Section 13(6), the transfer is complete only after taking possession. Till such time the transfer



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is complete by handing over possession, the secured creditor can exercise his power to secure possession of secured asset.

14. When the provisions of the SARFAESI Act are construed, keeping in mind the object and applying the rule of purposive construction, this Court is unable to countenance the submission made by learned counsel for the petitioner. The security interest of the bank will continue till such time the transfer in favour of the auction-purchaser is complete by handing over possession.

15. The secured creditor had right to take possession of the secured asset and is held to be a secured creditor even after the limited transfer to the auction-purchaser, as held by Hon'ble Supreme Court. It is to be noted that the entire interest in the property not having been passed on to the auction purchaser, the secured creditor remained as secured creditor even as per the interpretation of the Hon'ble Supreme Court. Therefore, this Court is unable to countenance the submission of learned counsel for the petitioner. The submission based on the judgment of the Hon'ble Supreme Court is



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misconceived as the Hon'ble Supreme Court has in fact set aside the judgment of Bombay High Court accepting similar argument. Merely because there is some delay, the right of the auction-purchaser and the secured creditor cannot be defeated by such wrong interpretations. The Court should interpret a legislation to advance the object and not to defeat it. Having regard to the legislative intent also, this Court is unable to find force in the submission of learned counsel for the petitioner.

16. Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.S.SUNDAR J.)

(P.DHANABAL J.)

20-12-2024

Index : Yes/No

NC : Yes/No

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To:

The Authorised Officer cum Chief Manager,



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Indian Bank,
Royapetah Branch,
Gowdia Mutt Road,
Royapetah, Chennai-600 014.



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AND
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