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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 01.07.2024

+ **CRL.M.C. 1723/2024 & CRL.M.A. 6607/2024**

**MS CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED**

..... Petitioner

Through: Mr Kirti Uppal, Sr. Advocate with Mr
Sidharth Chopra, Mr Navneet
Thakran and Mr Aditya Raj,
Advocates

versus

SH MAHESH TANEJA AND ORS.

..... Respondent

Through: Ms Anju Jain, Mr Hitesh Sachar and
Mr Rabi Karmokan, Advocates for
R1 and R-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed under Sections 482 CrPC seeking quashing and setting aside of order dated 31.01.2024 passed by Ms. Neha Gupta Singh, CMM, North, District Court, Rohini, Delhi in the matter titled as “*Mahesh Taneja Vs. Cholamandalam Investment & Finance Ltd.*” bearing Case No. 1374/2023 whereby orders dated 03.07.2023 and 19.01.2024 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter in short reproduced to as “the SARFAESI”) appointing a Receiver with a direction



to take possession of the property i.e. “Ground floor built on property No.2650, measuring 160 sq. yards, situated at Hudson Lines, in the layout of plan of Redevelopment Scheme, of Kingsway Camp, Delhi -110009 (hereinafter referred to as ‘the subject property’), was stayed.

2. The case of the petitioner is that the Respondent No. 3 and other co-borrowers had approached the Petitioner herein to avail the credit facilities which was duly sanctioned by the Petitioner and a loan agreement dated 08.08.2014 was executed between the Petitioner and the borrowers. To secure the interest of the petitioner financial institution, the respondent no. 3 mortgaged the subject property with the petitioner by depositing the original title documents. The borrowers committed defaults in repayment of the said loan which led the petitioner to classify the borrowers’ account as a Non Performing Asset (NPA) on 05.02.2017. The Petitioner thereafter, issued a notice dated under Section 13(2) of the SARFAESI Act calling upon borrowers to pay the amount then outstanding with respect to the loan account. The borrowers failed to pay the outstanding amount within 60 days.

3. The Petitioner was constrained to approach the Ld. CMM under Section 14 of the SARFAESI Act, 2002 for taking physical possession of the subject property and preferred an application bearing No. 1055/2023 titled as ‘*Cholamandalam Investment and Finance Company Limited Vs. Geeta Rani & Ors.*’, which the Ld. CMM was pleased to allow *vide* order dated 03.07.2023 and a Receiver was appointed to take the physical possession of the subject property. Sequel to above, a possession notice dated 28.07.2023 was issued by the Ld. Receiver to the respondent no. 3 and other co-borrowers. The said notice was affixed outside the subject property.

4. The respondent No. 1 and 2, who are the third parties and are



claiming to be the owner of the subject property, approached the Ld. Debts Recovery Tribunal by filing an application dated 14.08.2023 filed under Section 17 of the SARFAESI Act, 2002 bearing S.A. No. 469/2023 titled as “*Sh. Mahesh Taneja & Anr. Vs. Cholanmandalam Investment and Finance Company Limited*” praying *inter-alia*, for setting aside the proceedings initiated by the petitioner in respect of the subject property. It was further prayed that the petitioner be directed not to initiate any proceedings in respect of the subject property. The said prayer was premised on the ground that the respondent nos. 1 and 2 had purchased the subject property in a public auction carried out by the Syndicate Bank with regard to the said property to satisfy the Recovery Certificate and thereafter a sale certificate dated 20.09.2018 was issued by the Syndicate Bank in their favour. Subsequently, a sale deed dated 27.10.2018 was also registered in respect thereof.

5. The respondent nos. 1 and 2 also filed an application on 16.08.2023 before learned CMM seeking clarification of order dated 03.07.2023 to an extent that the subject property belongs to them and not to the respondent no. 3 as pleaded by the petitioner. Yet another application was filed by the respondent nos. 1 and 2 before the learned CMM on 18.08.2023 under Section 340 CrPC (CT No. 1374/2023) alleging concealment of fact that the subject property had been purchased by respondent nos. 1 and 2 by public auction in O.A. No. 437/2017 entitled ‘*Syndicate Bank Vs. M/s Daulat Ram Naresh Kumar, Mrs. Geeta Rani and Ors.*’

6. As the possession was not taken by the learned Receiver on 17.08.2023 as proposed in her notice dated 28.07.2023, the petitioner once again approached the learned CMM to take the physical possession of the



subject property and prayed for the extension of time as granted *vide* earlier order dated 03.07.2023. The said application was allowed *vide* order dated 19.01.2024 and receiver was directed to take possession of the property in question within 15 days as per order dated 03.07.2023.

7. Pursuant to the above, the Ld. Receiver issued a possession notice dated 22.01.2024 wherein the possession of the subject property was scheduled to be taken on 02.02.2024.

8. The respondent no. 1 and 2 thereafter, filed an application being I.A. 263/2024 in S.A. 469/2023 on 24.01.2024 praying for stay of notice dated 22.01.2024 issued by the Court Receiver whereby she had proposed to take over the possession of the subject property on 02.02.2024.

9. The said application was taken up for hearing by the learned Presiding Officer, DRT-1 Delhi on 31.01.2024, in which the notice was issued and the matter was directed to be listed on 01.02.2024.

10. Simultaneously, the respondent nos. 1 and 2 approached the learned CMM and filed an application on 25.01.2024 seeking early hearing of the application CT No. 1374/2023 (application under Section 340 CrPC).

11. The urgent hearing application was listed before the learned CMM, and notice was issued to the petitioner returnable on 31.01.2024, on which date the following impugned order came to be passed:

*“Issue notice to the Receiver Ms. Poonam Yadav to verify the ownership and possession of the property before complying order dt. 03.07.2023. **Order dt. 03.07.2023 & 19.01.2024 is stayed till further orders.** Copy be sent to Receiver today telephonically and through usual mode.*

Issue notice to Cholamandlam Finance for NDOH.

Copy of order dasti to the applicant.



Put up for further proceedings on 02.03.2024. ”

12. Mr. Kirti Uppal, the learned senior counsel appearing on behalf of the petitioner submits that learned CMM has no jurisdiction to entertain any application of a third party with respect to the order passed in terms of Section 14 of the SARFAESI Act.

13. He submits that the remedy available to the respondent nos. 1 and 2 against the order of the learned CMM was to approach the learned DRT under Section 17 of the SARFAESI Act, which remedy was actually availed by the said respondents, but no order was passed by the learned DRT on the said application of the respondents and the same is still pending adjudication before the learned DRT. In support of his contention, the learned senior counsel has invited the attention of the Court to the order dated 06.07.2023 of the Hon'ble Supreme Court in ***M/s Phoenix Arc Private Limited Vs V. Ganesh Murthy &Anr. SLP(C) no.22093-22094/2022.***

14. He further submits that application under Section 340 CrPC, in which the impugned order has been passed, is itself not maintainable in the proceedings under Section 14 of the SARFAESI Act, in as much as the proceedings under Section 14 are merely administrative and not adjudicatory and a third party does not have a right to be heard at that stage. To buttress his contention the learned senior counsel has placed reliance on the decision of the High Court of Madras in ***Karuppasamy Vs The Authorised Officer, Axis Bank Limited Cr LO.P. No. 17489 of 2022.***

15. *Per contra*, the learned counsel appearing on behalf of the respondent nos. 1 and 2 submits that the said respondents are in peaceful physical and legal possession of the property after having purchased the same in an



auction sale conducted to satisfy the recovery certificate issued in favour of the Syndicate Bank in O.A. No. 437/2017.

16. He submits that order dated 03.07.2023 was obtained on false statement made by the petitioner with respect to ownership and possession of property being with respondent no. 3, which is not the case. He submits that the interest of a *bonafide* purchaser in an auction sale is ought to be protected. To buttress his contention he has placed reliance on the decision of the Supreme Court in *Ashwin S. Mehta and Anr. Vs. Custodian and Ors. (2006)2 SCC 385*.

17. He submits that remedy under Section 340 CrPC is independent of the remedy availed by the respondent nos. 1 and 2 under Section 17 of the SARFAESI Act and the application under Section 340 CrPC is maintainable even at the instance of third party when false statement has been made by the secured creditor with regard to the ownership and possession of the secured asset. He further submits that an application under Section 340 CrPC can be considered in the proceedings under Section 14 of the SARFAESI Act.

18. I have heard the learned counsel for the parties and have perused the record. On the basis of the contentions raised by the parties, the short question which arises for consideration in the present petition is that whether the learned CMM in exercise of his jurisdiction under Section 14 of the SARFAESI Act could entertain an application under Section 340 CrPC at the instance of third party (respondent nos. 1 and 2) and pass an order staying its earlier order whereby the Receiver had been appointed to take possession of the secured asset in terms of the said provision.

19. Before adverting to the aforesaid question that arises in the present



petition, apt it would be to refer to Section 14 of the SARFAESI Act, which reads as under:

“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 assets1 [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,—

(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.”

20. Under the SARFAESI Act, a secured creditor has been conferred a right to enforce any security interest created in his favour without the intervention of the Court or tribunal except for seeking limited assistance of



the Chief Metropolitan Magistrate to take possession of secured asset as provided under Section 14 thereof. Under the said provision the secured creditor has an option to file an application to seek assistance of the CMM or the District Magistrate, if required, for taking possession or control of any secured asset. Once the Magistrate is satisfied as to the contents of the affidavit furnished by the secured creditor in terms of the first proviso to sub-section (1) of Section 14 of the SARFAESI Act, he will pass suitable orders for the purpose of taking possession of the secured asset.

21. Before passing such an order the learned CMM or District Magistrate is not even obliged to give notice or afford any hearing to the borrower. This itself shows that the function to be performed by the Magistrate under Section 14 of the SARFAESI Act is ministerial and not adjudicatory. Thus, it will not be within the purview of the Magistrate's jurisdiction under Section 14 of the SARFAESI Act to entertain any objection either of the borrower or of any third party questioning the exercise of powers under the said provision. As a logical extension of this proposition, the learned CMM cannot entertain an application under Section 340 CrPC while exercising his limited powers of extending assistance to the secured creditor in taking possession or control of any secured asset.

22. Reference may also be had to the decision of a coordinate bench of this court in *Munish Kumar Bhunsali Vs. Kotak Mahindra Bank Ltd. 2019 SCC OnLine Del 9702*, wherein it was observed that the role of the Magistrate while dealing with an application is not adjudicatory. The relevant part of the decision reads thus:

“27. Thus, the role of the Magistrate while dealing with an application under Section 14 of the Act is not adjudicatory



nor is he obliged to give notice to the borrower. By filing an application under Section 14 of the Act, the secured creditor exercises one of the options available with him to take possession of the secured asset. All that the Magistrate at this stage is required to see is that requirements of the Act and the rules framed thereunder are satisfied in the affidavit filed on behalf of the secured creditor and proceed to pass an order.”

(emphasis supplied)

23. Another related facet of the controversy which needs to be noted is that the power under Section 340 CrPC read with Section 195(1)(b) CrPC can be exercised only where someone fabricates false evidence or gives false statement in the judicial proceedings, and not in other proceedings. This becomes evident from the reading of Sections 193, 199, 204 and 209 of the Indian Penal Code which have been referred to in Section 195(1)(b) CrPC. The said provisions use the expression “judicial proceedings” or “Court of Justice”. The expression “Court of Justice” has been defined under Section 20 IPC as under:

“20. “Court of Justice”.—The words “Court of Justice” denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

24. The Hon’ble Supreme Court in **Amarsang Nathaji As himself and as Karta and Manager vs. Hardik Harshadbhai Patel and Ors. (2017) 1 SCC 113**, has also observed that for invoking Section 340 CrPC the statement or evidence given in relation to proceedings in the Court should not only be false or fabricated but it should be intentionally given at any stage of the *judicial proceedings*. The relevant para of the decision reads as under:



“6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as “IPC”); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. v. Union of India [K.T.M.S. Mohd. v. Union of India, (1992) 3 SCC 178 : 1992 SCC (Cri) 572]). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.”

25. As the petitioner in the proceedings under Section 14 of the SARFAESI Act had furnished the affidavit only in terms of first proviso to sub-section (1) of the said provision and such affidavit was not furnished by way of evidence nor the proceedings under Section 14 of the SARFAESI Act can be construed as judicial proceedings, therefore, the learned CMM has no jurisdiction to entertain an application under Section 340 CrPC.

26. In view of the above discussion, the impugned order dated 31.01.2024 cannot be sustained and is accordingly, set aside.

27. Needless to add that the respondent nos. 1 and 2 are not remediless. It is no more *res-integra* that an order under Section 14 of the SARFAESI Act can be challenged by any aggrieved person by filing an application under Section 17 of the SARFAESI Act. Reference in this regard may be had to



the decision of the Hon'ble Supreme Court in *M/s Phoenix Arc Private Limited* (*supra*) wherein the challenge was to the order of the High Court whereby order passed under Section 14 of the SARFAESI Act was quashed exercising powers under Section 482 CrPC. The relevant part of the order reads thus:

“The petitioner is aggrieved by the Order dated 15.06.2022 passed by the High Court of Judicature at Madras, whereby the High Court has quashed the Order passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘SARFAESI ACT’). The contention put forth in the instant petition is that a petition filed under Section 482 of the Criminal Procedure Code (Cr.P.C.) to quash an order passed under the provisions of the SARFAESI Act was not sustainable. We note that the said contention has sufficient force as any remedy against such order can be availed only under the SARFAESI ACT’, 2002.

Though, rival contentions have been urged, we see no reason to go into the details of the same in the instant case since, the respondents can, in any event, avail their legal remedies in accordance with law.

Therefore, keeping in view all these aspects of the matter, the Order impugned herein dated 15.05.2022 passed by the High Court of Judicature at Madras is set aside. The respondents are however, reserved the liberty to avail their appropriate remedies in accordance with law, available to them.”

(emphasis supplied)

28. Similar view has been taken by the Hon'ble Supreme Court in *Standard Chartered Bank Vs. Noble Kumar and Ors. (2013) 9 SCC 620*, wherein it was observed as under:



“.....We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available.”

29. Therefore, it goes without saying that the respondent nos. 1 and 2 are at liberty to pursue their remedy under Section 17 of the SARFAESI Act before the concerned Debts Recovery Tribunal, which remedy has already been availed by the said respondents. However, considering the case of the respondent nos. 1 and 2 and to balance the equities it is deemed appropriate that the operation of the order dated 03.07.2023 read with order dated 19.01.2024, shall remain stayed till the next date fixed before the DRT in the S.A. 469/2023, as well as, the I.A. No. 263/2024 filed by the respondent no. 2 in the said S.A., on which date the learned DRT shall consider the extension of said interim protection on the merits of the case, uninfluenced by the observations made herein above.

30. The petition stands disposed of in the above terms.

VIKAS MAHAJAN, J.

JULY1, 2024
N.S. ASWAL